

LOCAL GOVERNMENT LAW AND ADMINISTRATION IN ENGLAND AND WALES

By
THE RIGHT HONOURABLE THE
LORD MACMILLAN
A LORD OF APPEAL IN ORDINARY
AND OTHER LAWYERS

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Company	Co.
Corporation	Corpn.
Home Office	H.O.
Justices	JJ.
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Ministry of Agriculture and Fisheries	M. of A.
Ministry of Health	M. of H.
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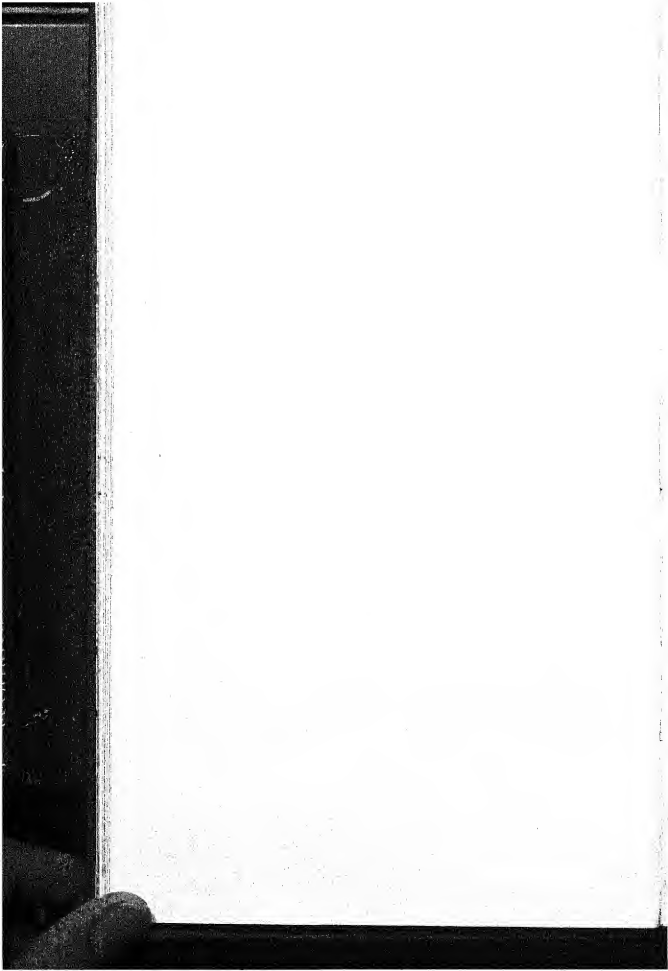


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NOTE

The Law in this Volume is, in general, stated as at October 1st, 1936, but it has been thought advisable to base certain statutory references on the recent Consolidation Acts, viz. (1) The Public Health Act, 1936, (2) The Housing Act, 1936, and (3) The Public Health (London) Act, 1936, though all these Acts have not come into operation at the date of the publication of this Volume. The first Act comes into operation on October 1st, 1937, the second on January 1st, 1937, and the third on October 1st, 1936.

THE ENGLISH AND EMPIRE DIGEST

In addition to the usual citation of the reports of cases in the footnotes, there will be found a reference to the volume, page, and case number at which the case appears in the Digest. Thus:

Duncan v. Knill (1907), 96 L. T. 911; 2 Digest 283, 560.

HALSBURY'S COMPLETE STATUTES OF ENGLAND

References to Public Acts of Parliament are followed by a reference to the volume and page at which the Act or section of the Act appears in Halsbury's Complete Statutes of England. Thus:

The Local Government Act, 1933; 26 Halsbury's Statutes 295.

THE ALL ENGLAND LAW REPORTS

References to 1936 cases are followed by a citation to the above Series of Reports. Thus:

Newell v. Cross, [1936] 2 All E. R. 203.

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See also titles :

CONSTITUTIONAL LAW AND LOCAL	MEANS TEST ;
GOVERNMENT ;	UNEMPLOYMENT.
EDUCATION SPECIAL SERVICES ;	

Introduction.—The relation between the Ministry of Labour and local authorities is not so intimate as in the case of other central departments. The Ministry does not supervise any major service of local government, but, as large-scale employers of labour, local authorities are affected by the work of the Ministry in connection with such matters as the insurance of employees and trade board regulations. In addition there is a special inter-relation with some authorities in the following cases: (1) The establishment of employment exchanges. (2) The grant of temporary relief by public assistance committees to recipients of unemployment insurance benefit or unemployment assistance. (3) Work done by certain local authorities on behalf of the Ministry (relating to juvenile employment) or the Unemployment Assistance Board (acting as agents in rural areas).

Contact between the Ministry and local authorities is made in the following ways: (1) by the issue of circulars and regulations by the Ministry or the Unemployment Assistance Board; (2) by inspection by the Ministry in the case of juvenile employment work undertaken by local authorities; (3) by representations by the local authorities and conferences with Ministry officials as to the situation of employment exchanges.

The points of contact and certain financial consequences are further discussed in subsequent sections. [1]

Formation.—The Ministry of Labour was established by sects. 1 and 10 of the New Ministries and Secretaries Act, 1916 (a), which authorised the appointment of a Minister of Labour, and empowered the Minister to appoint secretaries, officers and servants and to pay them out of monies provided by Parliament. By sect. 2 of the Act certain powers and duties of the Board of Trade mentioned in its Schedule were transferred to the Minister, and he was also given any other powers and duties of the Board or of any other Government department or authority, relating to labour or industry whether conferred by statute or otherwise, which an Order in Council should transfer

(a) 3 Halsbury's Statutes 413, 414.

to him or should authorise him to perform concurrently with or in consultation with a Government department or authority. By sect. 12 (b) both the Minister and one secretary were allowed to be elected and to sit and vote in the House of Commons. The Minister reports on the work of his department in his annual report (c). In the Schedule to the Act of 1916 (d), the following Acts are mentioned: the Conciliation Act, 1896, the Labour Exchanges Act, 1909, the Trade Boards Act, 1909, the National Insurance (Unemployment) Acts, 1911 to 1916, and Part I. of the Munitions of War Act, 1915. The last-named, with many rules and orders made under it, was repealed after the War, and the Unemployment Insurance Act, 1920, and amending Acts, took the place of the National Insurance (Unemployment) Acts. The functions of the Board of Trade under the statutes were transferred on January 10, 1917 (e), and by another order (f) the duties performed by the Department of Labour Statistics of the Board of Trade were transferred in the same year. The chief publications of the Statistical Department are the "Ministry of Labour Gazette," the "Abstract of Labour Statistics," a Local Unemployment Index, supplied to 747 different areas, and reports of any special inquiries made into various trades or conditions of labour. Other duties have been imposed on the Minister from time to time by Act of Parliament as shown later. [2]

Conciliation.—The duties under the Conciliation Act, 1896 (g), are those of registering conciliation boards for settling disputes between employers and employees. The Minister himself may be called in, where a difference exists, to inquire and take steps with a view to an amicable settlement. The Minister in this case appoints a conciliator, who, after a settlement has been agreed to, draws up the terms and sends a copy to the Minister. These powers are extended by the Industrial Courts Act, 1919 (h), under which the Minister of Labour is empowered to set up an industrial court, to which trade disputes can be referred, or he can appoint one or more persons as arbitrators. He may also set up a court of inquiry to inquire into the causes of a dispute that exists or is apprehended, whether or not the dispute has been reported to him officially, and the court may make reports to be laid before both Houses of Parliament. In any dispute in the industry of agriculture, the Minister must consult with the M. of A. & F. (sect. 11). [3]

By sect. 16 of the Electricity (Supply) Act, 1919 (i), the Minister of Labour is authorised to appoint a board of referees to award compensation for any deprivation of employment or loss of emoluments under the Act, and by sect. 21 (2) of the Electricity (Supply) Act, 1922 (k), he may make rules as to the procedure before the referees. Local authorities possessing electricity undertakings are directly affected by these provisions. [4]

By sect. 64 of the Railways Act, 1921 (l), the Minister of Labour nominated an independent chairman to the National Wages Board by whom disputes as to wages paid, or the conditions of service, in the

(b) 3 Halsbury's Statutes 415.

(c) The latest, published for 1935, is Cmd. 5145.

(d) 3 Halsbury's Statutes 415.

(e) S.R. & O., 1917, No. 46, p. 419.

(f) 19 Halsbury's Statutes 672—673.

(g) 7 Halsbury's Statutes 764.

(h) 14 Halsbury's Statutes 361.

(i) *Ibid.*, No. 666, p. 420.

(j) *Ibid.*, 716—720.

(k) *Ibid.*, 788.

railway service, were settled on appeal from the Central Wages Board. In 1933, on the notice of the companies, this scheme was discontinued and negotiations are now being conducted by a joint committee.

The Minister of Labour certifies whether a body is a proper one to apply to the Minister of Transport to vary the limits on drivers' hours imposed by sect. 19 of the Road Traffic Act, 1930 (*m*), and by sect. 93 of that Act (*n*) as amended by sect. 32 of the Road and Rail Traffic Act, 1933 (*o*), any dispute as to the wages and conditions of employment of persons employed in connection with public service vehicles, may be referred by the Minister of Labour to an industrial court for settlement. By the Cotton Manufacturing Industry (Temporary Provisions) Act, 1934 (*p*), the Minister may make orders giving statutory effect to rates of wages agreed between representative organisations in the cotton manufacturing industry. [5]

Employment Exchanges.—The Labour Exchanges Act, 1909 (*q*), gave the Board of Trade power to establish labour exchanges for the assistance of employers in registering vacancies and employees in obtaining work, and for collecting and furnishing material information. Regulations were to be made as to the management of these exchanges (*r*), and the expenses were to be defrayed by the Board of Trade. As already stated, this work was transferred to the Minister of Labour in 1917. It is usual for local authorities to utilise the machinery of the exchanges for the recruitment of manual workers, and particularly in the case of temporary staff for summer employment in public baths, parks and recreation grounds. In some cases this policy is specifically adopted by resolution of the authority. The labour exchanges, latterly called employment exchanges, are also used for the payment of benefits under the Unemployment Insurance Acts, as described later. In the establishment of new exchanges, local authorities for the areas to be served are consulted as to suitable sites. The local authorities may make representations to the Minister and conferences may be arranged with the Minister's divisional officers. [6]

Trade Boards.—By the Trade Boards Act, 1909 (*s*), the Board of Trade were empowered to establish trade boards (*t*) to consider generally matters in respect of certain trades mentioned in the Act which were referred to them by the Board or the Secretary of State or any other Government department, and specially to fix rates of minimum wages in these trades (*u*). Fines were imposed by sect. 6 of the Act for non-payment or under-payment, and the Board of Trade were authorised to appoint inspectors (*a*) to investigate complaints and, if necessary, to conduct proceedings in court against employers. Regulations as

(*m*) 23 Halsbury's Statutes 625.

(*n*) *Ibid.*, 673.

(*o*) 26 Halsbury's Statutes 898.

(*p*) 27 Halsbury's Statutes 717.

(*q*) 20 Halsbury's Statutes 650—652. In December, 1934, there were 1,185 local exchanges, and the vacancies filled increased from 892,713 in 1923 to 2,512,391 in 1935.

(*r*) S. 2. See S.R. & O., 1910, No. 800 as to general management, and S.R. & O., 1917, No. 601 as to the formation of advisory committees.

(*s*) 19 Halsbury's Statutes 692—702.

(*t*) For their constitution, see s. 11; 19 Halsbury's Statutes 696.

(*u*) S. 4; *Ibid.*, 693.

(*a*) See ss. 14, 15; 19 Halsbury's Statutes 699. The number of prosecutions instituted in 1935 was 28, in comparison with 40 in 1934, convictions being obtained in 25 cases and 3 being dismissed.

to the means of bringing to the notice of workers the wages fixed by the trades boards were to be made by the Board of Trade. After these powers had been transferred to the Minister of Labour in 1917, a further Act of 1918 (*b*) extended the Act of 1909 to other trades and gave him power to apply the Acts by special order to additional trades or to withdraw a trade from the operation of the Acts (*b*). Male and female assistants employed in laundries ancillary to hospitals and institutions provided by local authorities are subject to Trade Board Regulations. [7]

Unemployment Insurance.—The law relating to unemployment insurance, administration of which was transferred to the Minister of Labour in 1917, was consolidated first by the Unemployment Insurance Act, 1920, and again recently by the Unemployment Insurance Act, 1935. Under sects. 104, 106 of this Act, the Minister of Labour controls the working of the Act by making regulations and orders (*c*).

Public assistance authorities, *i.e.* county and county borough councils, are affected by sect. 54. If relief is granted to an insured person which is greater than the sum which would have been granted if the recipient had been in receipt of insurance benefit to which he was entitled, the amount of the excess is payable by the Ministry to the authority. A similar payment is made if relief has been granted because the recipient was not in receipt of the *full* insurance benefit to which he was entitled.

A claim for repayment of relief also arises where the relief has been granted to a dependant of an insured person and exceeds the sum that would have been granted if an increase of unemployment insurance benefit had been payable to the insured person in respect of the dependant.

These transactions, referred to as "Excess Relief Claims," arise where the right to benefit of an insured contributor, in respect of himself or his dependants, is in dispute and payment of benefit is deferred pending settlement.

By sect. 55 orders are to be made to remove anomalies in seasonal trades, and part-time work, and in regard to the work of married women, as formerly provided for by the Unemployment Insurance (No. 3) Act, 1931 (*d*), which is repealed by the 1935 Act. The regulations are to deal with disputed contributions, the recovery by the employer of the employee's contribution, the payment of contributions by means of stamps and the return of sums paid erroneously, the appointment of umpires, deputy umpires, and of the chairmen and members of the courts of referees, the methods of payment of benefit through the post office, and the insurance of persons employed on night work. By sect. 56 the Minister of Labour is also to continue the Unemployment Statutory Committee, first established under the Act of 1934, who give him advice generally and report on the Fund under the control and management of the Minister. The Minister may also make special arrangements with associations under schemes for the payment of benefits through the associations (sects. 68 to 74). Employments which are exempted, or which are excepted if certified by the Minister,

(b) Trade Boards Act, 1918, s. 1; 19 Halsbury's Statutes 708. A list of the special orders applying the Acts to additional trades is printed at 19 Halsbury's Statutes 708, 709, and Supp. No. 4 at p. 48 of the notes to Vol. XIX.

(c) 28 Halsbury's Statutes 499—577.

(d) 24 Halsbury's Statutes 572.

are given in Parts II. and III. of the First Schedule (c), but these may be varied by the Minister's regulations (sect. 3). The Minister is the authority for determining whether any employment is insurable employment under the Act and as to whether a person is an insurable person (sect. 4), but there is an appeal from his decision to the High Court (sect. 84). The work of the Minister is to be carried out by officials appointed by the Minister, who work through employment exchanges, and are paid from Government funds (sects. 64, 65). The Minister may lend these officers to assist any scheme or to hold any inquiry for promoting greater regularity of employment (sect. 100), and others of his powers for the assistance of employment are those of making schemes for the transfer of workers, and the payment, where necessary, of their fares (sect. 102) and consultation with associations of employers and employees as to the best method of notification of vacancies (sect. 101). [8]

Unemployment Assistance.—The Minister of Labour is also the Minister responsible to Parliament for unemployment assistance, though its administration is in the hands of the Unemployment Assistance Board. By sect. 52 of the Unemployment Act, 1934 (f), the Minister is to consider the draft rules and regulations drawn up by the Board, and approve them before laying them before Parliament, and he is to lay the annual report of the Board before Parliament (g). The approval of the Minister is necessary when the Board provide and maintain training courses (h), and he must be consulted as to the travelling and other allowances of advisory committees (i); the chairmen of the appeal tribunals are to be appointed by him (k), and under para. 3 of the Seventh Schedule he is to nominate a panel of persons to represent workpeople from whom the Board select one of the other members of the tribunal, and the Board must consult with the Minister as to the remuneration and expenses of the tribunals. The Minister has also general control of the Unemployment Assistance Fund, and he may allow his officers to assist the Board in investigating the circumstances of applicants for assistance and in issuing allowances (sects. 38 (5), 42). [9]

Sect. 38 (5) also empowers the Board to enter into similar arrangements with any local authority. From the first appointed day until 31 March, 1936, the Board made use of this power to enter into arrangements with certain county councils. These provided for the latter to act as agents for the Board in the administration of Unemployment Assistance in rural areas.

(e) As to local government employees, see title UNEMPLOYMENT. By Part I. of Sched. I. employment within the meaning of the Act includes employment under any local authority other than such employment as may be excluded by regulations under Part II. Policemen and teachers who are in contributory service under the Teachers (Superannuation) Act, 1925; 7 Halsbury's Statutes 317, are exempted by paras. 5 and 6 of Part II., and under para. 3 of Part III. the Minister may in the case of employment under a local authority, if any enactment relating to the superannuation of persons in that employment provides for the aggregation of service in that employment under two or more employers, whether continuous or not, treat such service for the purposes of the Act as if it had been service in the same employment.

(f) 27 Halsbury's Statutes 800.

(g) Act of 1934, s. 35 (4); 27 Halsbury's Statutes 787.

(h) *Ibid.*, s. 37.

(i) *Ibid.*, s. 35 (3).

(k) *Ibid.*, s. 39 (4) and Sched. VII.; 27 Halsbury's Statutes 791, 820.

Acting through officials engaged on public assistance work, the county council became responsible for:—

- (a) The investigation of circumstances of applicants for assistance.
- (b) Deciding whether such applicants were within the scope of the statutory provisions.
- (c) Determining the needs of applicants.
- (d) General supervision of the agency arrangements.

A scale of payments for the services of county council staffs was agreed by the Board and the County Councils Association. Many of the officers concerned had knowledge of the administration of transitional payments, experience of value in facilitating a transition from the old to the new system. It is understood that the number of appeals from decisions of agency officers to the tribunal set up under the Act was small.

These particular arrangements are no longer of practical importance but the situation out of which they arose is significant. It is frequently suggested that a wider area of administration is desirable for other services, notably for highways, and in the light of such suggestions the agency arrangements described are of interest as an unusual experiment in the field of the relationships between central departments and local authorities.

The appropriate local authorities—county and county borough councils—are affected by the provisions of the Unemployment Act, 1934 (Sched. VIII.) (l), which define the conditions under which outdoor relief shall be granted to, or withheld from, persons covered by the provisions of Part II. of the Act, and provide for certain joint arrangements.

Outdoor relief may be granted to such a person pending a decision as to his right to Unemployment Assistance and, except as regards medical relief, the amount of such relief (but not exceeding the allowance due) must be reimbursed to the public assistance authority. Subject to the same conditions the Board also reimburse to the authority the cost of relief granted in cases of sudden or urgent necessity.

This does not apply if the relief has been granted during a period when the recipient has failed to comply with conditions attached to the grant of unemployment assistance, i.e. that he attend a training course or become an inmate of a workhouse (Unemployment Act, 1934, sect. 40 (2) (c), (d)) (m).

The Board may also arrange for the attendance of persons at training courses, etc., or for their admission to workhouses, provided by local authorities, on such terms as may be agreed. [10]

Juvenile Labour.—In certain cases the Minister of Labour acted with local education authorities in connection with the choice of employment by children and young persons under 18 years. These powers are now contained in the consolidating Unemployment Insurance Act, 1935, sects. 75 to 83 of that Act (n) replacing sects. 1 (3) and 13 to 16 of the Unemployment Act, 1934. By sect. 75 of the Act of 1935 the Minister is to make regulations as to the crediting of contributions to persons receiving whole-time education. By sect. 76 (which replaces sect. 13 of the 1934 Act), local education authorities for higher education must submit to the Minister schemes for the provision of courses of instruction for young persons from the age at which they enter into

(l) 27 Halsbury's Statutes 821.

(n) 28 Halsbury's Statutes 545—551.

(m) *Ibid.*, 792.

employment to eighteen years, and if these schemes are approved by the Minister they must carry them out; if they do not do so the Minister may by order compel them, and by sect. 77 the Minister himself may provide training courses for persons over eighteen. Under sect. 78 he may require the attendance of persons under eighteen and make regulations as to their attendance (*o*) and defray the expenses of the courses he provides and contribute to those provided by other authorities or bodies (*p*), while he may also pay the travelling and other expenses of persons attending the courses; and also authorise such payments and contributions from the Unemployment Fund as he considers necessary (sects. 79, 80). The Act of 1935 repeals sect. 107 of the Education Act, 1921 (*q*), which gave powers to higher education authorities to give assistance to boys and girls up to the age of eighteen years as to the choice of suitable employment by means of the collection and communication of information and the furnishing of advice, and replaces it by sect. 81, sub-sect. (5) of which also provides that in regard to that function the Minister of Labour, instead of the Board of Education as in sect. 118 of the Act of 1921, should be responsible for the financial side (*r*). A grant equal to 75 per cent. of the net expenditure of the authority in this connection is payable by the Ministry. By sect. 82 of the Act of 1935, the Minister has power to make regulations as to the notification by employers to the Minister when persons under eighteen leave their employment.

See, further, as to choice of employment, pp. 205, 206 of Vol. V.

[11]

Unemployment Relief Works.—The Unemployment (Relief Works) Act was passed in 1920 to continue in force for a year only, but it has been continued annually by Expiring Laws Continuance Acts. Sect. 1 (*s*) made provision for the acquisition of land required for works of public utility, and sect. 2 enacted that if it appeared to the Minister of Labour that immediate action is necessary for the purpose of dealing with unemployment and that land cannot be acquired quickly enough even with the powers conferred by sect. 1, he may certify to that effect (*t*), and the Minister of Transport, or with his approval any local authority, may enter and take possession of any land necessary in connection with the construction of any arterial road (*u*). Notice of intention to enter must be given, but on entry the land must be taken to have been acquired compulsorily, the Lands Clauses Acts apply, and compensation for the land is payable. By sect. 4 of the Act (*v*), where the Minister of Labour has given such a certificate, sect. 9 (2) of the Development and Road Improvement Funds Act, 1909 (*b*), which provides that before the Treasury approve of the construction of a new road by the Minister of Transport they

(*o*) See model scheme, issued by the Minister on July 9, 1934. As to juvenile labour generally, see pp. 30—48 of the Ministry of Labour Annual Report for 1935.

(*p*) S. 79. See S.R. & O., 1934, No. 847, and Memo. A.C.M. 4, on legal proceedings for enforcement.

(*q*) 7 Halsbury's Statutes 189.

(*r*) For regulations made under the Act of 1934, see S.R. & O., 1934, No. 1443. For model proposals, see circular C.E., No. 9.

(*s*) 20 Halsbury's Statutes 652. See also title UNEMPLOYMENT RELIEF WORKS.

(*t*) No certificates were made in 1935.

(*u*) The powers were extended and the word "arterial" omitted by the Public Works Facilities Act, 1930, s. 4; 23 Halsbury's Statutes 774.

(*v*) 20 Halsbury's Statutes 655.

(*b*) 9 Halsbury's Statutes 213. See title BY-PASS ROADS.

must satisfy themselves that notice of the intention to construct such a road has been sent by the Minister of Transport to every highway authority in the area of which any part of the proposed road will be situate and must consider objections, is not to apply. [12]

Other Powers and Duties.—By sect. 13 of the Trade Union Act, 1871 (c), regulations were to be made by a Secretary of State for registering trade unions with the Registrar of Friendly Societies. This power was transferred to the Minister of Labour in 1925 (d), but no later regulations than those of the Home Secretary in 1922 (e) have been made. [13]

In 1920, the Harbour, Docks and Piers (Temporary Increase of Charges) Act, and the Tramways (Temporary Increase of Charges) Act, were passed to make provision for the temporary modification of statutory charges and these measures have been continued by the Expiring Laws Continuance Acts. In order to obtain figures for the Minister of Transport to regulate the charges, he was empowered (f) to ask the Minister of Labour to certify the rates of wages fixed by any body generally representative of employees and employers or by the National Joint Industrial Council. [14]

Under the Railways Act, 1921, the Railway Rates Tribunal was formed for the consideration of railway charges (g). One general panel and one railway panel were constituted (h) from which persons might be added to the permanent members of the tribunal in certain cases, and on the general panel the Minister of Labour, after consultation with bodies he considered as representative of the interests of labour and of passengers, was entitled to nominate twelve persons. [15]

By sect. 18 of the Mining Industry Act, 1926 (i), the Minister of Labour, after consulting employers and employees, may make regulations securing preference in recruitment for persons employed before April 30, 1926, restricting employment and requiring certain information. The restrictions are still in force. [16]

In regard to small holdings, by sect. 5 (5) of the Agricultural Land (Utilisation) Act, 1931 (k), if it appears to the Minister of Agriculture and Fisheries that there are persons desirous of obtaining small holdings under that Act, who require training, either for themselves or their dependants, he may consult the Minister of Labour, who may make arrangements for such training by the establishment of training centres, for any person and for not more than one dependant. In this section "dependant" means the husband, wife, son or daughter (including a step-son or step-daughter and an adopted child) of the person, and by sect. 6, the facilities are extended to agricultural workers and ex-service men.

The Minister of Labour also issues permits for the employment of foreign workers under the Aliens Order, 1920 (l). [17]

(c) 19 Halsbury's Statutes 644.

(d) S.R. & O., 1925, No. 1261.

(e) See S.R. & O., Rev. 1904, Vol. XIII., Trade Unions, p. 1; S.R. & O., 1922, No. 844.

(f) S. 3 (3) of both Acts; 18 Halsbury's Statutes 591; 20 Halsbury's Statutes 44.

(g) S. 20; 14 Halsbury's Statutes 332.

(h) S. 24.

(i) 12 Halsbury's Statutes 201.

(k) 24 Halsbury's Statutes 55.

(l) Aliens Order, 1920, Art. I. (3) (b) (S.R. & O., 1920, No. 448), as amended by No. 2262 of the same year. In 1935, 11,844 permits were granted, being 1058 more than in 1934, and 1590 were refused.

LAKES IN PLEASURE GROUNDS

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See also titles :

ACCIDENTS ;	PLEASURE BOATS ;
BYE-LAWS ;	PUBLIC PARKS ;
OPEN SPACES ;	SKATING.

General.—Lakes, under the care of local authorities, are usually either natural lakes forming part of a park or open space purchased or received as a gift by the authority, or are artificial lakes constructed by them in a park or open space, including many paddling pools. They add greatly to amenities, and also provide means of exercise and sport in the way of boating, paddling and, it may be, bathing and skating. [18]

Provision by Local Authorities.—By sect. 164 of the P.H.A., 1875 (*a*), borough and district councils are permitted to purchase or take on lease, and to lay out, plant, improve and maintain lands as pleasure grounds, or to support or contribute to those provided by other persons. No mention is made of waters in such grounds, but they would naturally be included. Bye-laws may be made for the regulation of the ground subject to the confirmation of the M. of H., and these might include bye-laws for the regulation of any lake in it.

By sect. 44 (2) of the P.H.A., 1890 (*b*), a borough or district council may themselves provide and let for hire, pleasure boats on any lake or piece of water in a park or pleasure ground provided by them, or license other persons so to do, and may make bye-laws, subject to confirmation by the M. of H., for regulating the numbering and naming of the boats, the number of persons to be carried in them, the boat-houses and mooring places for them, and for fixing the rates of hire and the qualifications of boatmen, and for securing their good and orderly conduct. Further powers as to parks and pleasure grounds are given in sect. 76 of the P.H.A. Amendment Act, 1907 (*c*), and sect. 56 of the P.H.A., 1925 (*d*), but except as to enclosures for skating, as to which see the title on that subject, there is no special mention of lakes. Sect. 284 of P.H.A., 1936 (*e*), empowers a local authority to provide life-saving appliances at such places, whether used for

(*a*) 18 Halsbury's Statutes 603, as extended to rural district councils by S.R. & O., 1931, No. 580; see 24 Halsbury's Statutes 262. Model bye-laws are issued by the Ministry in connection with this section.

(*b*) 13 Halsbury's Statutes 841, also extended as in note (*a*), but in boroughs and urban districts in force where Part III. of the Act is adopted.

(*c*) *Ibid.*, 938.

(*d*) *Ibid.*, 1130. See title PUBLIC PARKS.

(*e*) Replacing on October 1, 1937, s. 93 of P.H.A. Amendment Act, 1907.

bathing or not, as they think fit, and this would extend to a lake in a park or pleasure ground.

Public parks or recreation grounds are often provided by borough councils under local Acts, which also define the powers of the council. [19]

Management.—The management of a lake in a public park or pleasure ground is an element in the management of the park or ground. In cases of accident (*f*) the liability of the council is the same in regard to lakes as it is in regard to their other forms of property (*g*). Two cases have been before the Scottish courts in regard to children being drowned, in the one case in an artificial pond, and in the other in a river which ran through the park (*h*). It was held that the council were bound to give reasonable protection and take special care that there was no trap where children were concerned, but that parents were responsible for the care of the child. The Lord President said, "I see no distinction in this matter between pieces of water which are natural and which are artificial. . . . The proximate cause was not the existence of the pond but of the child being unattended." In many cases local authorities employ special park keepers where there is a likelihood of children playing in dangerous places. [20]

London.—Similar considerations apply to London, although the powers to lay out parks, etc., and to provide facilities for boating, bathing, skating, etc., are derived from different statutes, as to which see the London notes to titles OPEN SPACES, PLEASURE BOATS and SKATING. [21]

(*f*) See title ACCIDENTS in Vol. I.

(*g*) See title GAMES, PROVISION FOR.

(*h*) *Hustie v. Edinburgh Magistrates*, [1907] S. C. 1102; 36 Digest 79, 460, v.; and *Stevenson v. Glasgow Corpn.*, [1908] S. C. 1034; 36 Digest 52, g.

LAMPS AND LAMP-POSTS

See STREET LIGHTING.

LAND, ACQUISITION OF

See ACQUISITION OF LAND (OTHER THAN COMPULSORY); COMPENSATION ON ACQUISITION OF LAND; COMPULSORY PURCHASE OF LAND; LESSEE, LOCAL AUTHORITY AS.

LAND DRAINAGE

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See also titles :

CATCHMENT BOARDS ;
CONSERVANCY AUTHORITIES
DRAINAGE BOARDS ;
DRAINAGE RATES ;

LEE CONSERVATORS ;
POLLUTION OF RIVERS ;
THAMES CONSERVATORS.

Introductory.—The Land Drainage Act, 1930 (a), which came into operation on August 1, 1930, marks a new epoch in connection with the drainage of land for the prevention of flood and the improvement of agriculture. Prior to this, the drainage of land was dealt with by commissioners of sewers, land drainage boards, and bodies specially constituted or authorised under local Acts, or was left to the landowners concerned.

From very early times commissions of sewers had been granted under the prerogative of the Crown and various Acts of Parliament ; but the Statute of Sewers of Henry VIII. (b) is generally recognised as the foundation of land drainage law. This statute was amended and extended by many subsequent enactments, notably by the Commissions of Sewers Act, 1708 (c), the Sewers Act, 1833 (d), and the Land Drainage Act, 1861 (e).

(a) 23 Halsbury's Statutes 529—596.
(c) *Ibid.*, 998.
(e) *Ibid.*, 1045.

(b) 17 Halsbury's Statutes 985.
(d) *Ibid.*, 1000.

The Act of 1861 may be regarded as having provided the working basis for subsequent land drainage administration. This Act enabled the Sovereign on the recommendation of the Inclosure Commissioners (now the Minister of Agriculture and Fisheries) to direct commissions of sewers into all parts of England, inland as well as maritime (*f*), and assign their jurisdiction. It also provided for the constitution of drainage districts (as distinct from the issue of commissions of sewers) under the superintendence of drainage boards. Other amending and remedial Acts were passed from time to time which do not now call for reference. Such was the state of affairs that prior to the Land Drainage Act, 1930, no less than 375 drainage authorities exercised jurisdiction over small areas and practically none of them controlled any portion of the main rivers, but the Act of 1930 repealed the whole of the previous general legislation, ancient and modern, and consolidated the existing law, with drastic amendments, into a new and comprehensive code. [22]

As this title contains a large number of references to sections of the Act, it has been thought unnecessary, in most instances, to give a reference to the page in Vol. XXIII. of Halsbury's Statutes on which the particular section is printed.

The general scheme of the Act is that there shall be two classes of drainage authority (*g*) namely, (1) the catchment board, responsible for all work on or in connection with the main river and with supervisory jurisdiction over a wide area (see title CATCHMENT BOARDS); and (2) the ordinary drainage board (either within and subsidiary to a catchment area, or outside it), responsible for the drainage of limited areas and with power to levy drainage rates directly upon all hereditaments within their area on the basis of annual value (see title DRAINAGE BOARDS).

The Act contemplates, although it does not expressly enjoin, that commissioners of sewers are eventually to be abolished and existing drainage authorities superseded by authorities constituted under the Act. Meanwhile, as a transitional measure, the existing drainage districts and authorities are preserved. Sect. 1 (*h*) provides that any drainage districts or drainage areas constituted under the Land Drainage Act, 1861 (*h*), or under that Act as amended by any subsequent enactment, or under any other enactments relating to the drainage of land, shall be deemed, for the purposes of the Act of 1930, to have been constituted thereunder. Sect. 83 (2), (3) also provide that until the commission is determined by a scheme duly made under Part II., or an order under Part III., of the Act, commissioners of sewers shall continue to have all such powers as were vested in or exercisable by them immediately before August 1, 1930, and in addition the powers given to drainage boards by the Act. But all such continued powers are subject to the restrictions, conditions and qualifications attached to any like powers conferred on drainage boards by the Act. It will still be necessary, therefore, to refer, albeit briefly, to the powers of commissioners of sewers (*i*).

The responsibility for supervising the administration of the Act

(*f*) The Crown could formerly only grant commissions for areas liable to inundation by tidal waters.

(*g*) See s. 1: 23 Halsbury's Statutes 529.

(*h*) 17 Halsbury's Statutes 1045.

(*i*) See *post*, p. 14. For historical and more detailed treatment, see 25 Halsbury's Laws of England, p. 773, and such text-books as Callis, and Kennedy and Sandars.

rests with the Minister of Agriculture and Fisheries (in this title called "the Minister") but the functions as to the constitution under sect. 56 of river pollution authorities are performed by the Minister of Health. Sect. 71 of the Act allows the Minister first-mentioned to charge such fees for business transacted by him under the Act as the Treasury approve, and a long scale of fees was made in June, 1934 (*k*), superseding an earlier scale of 1931. [28]

Catchment Areas and Boards.—The Act provides that the forty-seven areas specified in Part I. of the First Schedule shall be catchment areas, but this list may be added to or altered at any time by order of the Minister (sect. 2 (1), (2)). If the order be opposed, it requires confirmation by Parliament (sect. 2 (3)).

A catchment area is the area drained by a main river (including an arterial drain and its tributaries). The limits are determined by a map of each catchment area prepared under sect. 5 by the Minister showing the main river by a distinctive colour.

The drainage board of a catchment area is termed a catchment board and is a body corporate with power to hold land without licence in mortmain (sect. 1 (2)). It is the sole authority over and responsible for all works in connection with the main river; and exercises a general supervision with respect to the drainage of the catchment area, and over internal drainage boards concerning the execution of their powers and duties (sects. 6, 7). A catchment board are also charged by sect. 4 with the general organisation of the catchment area as regards the alteration of boundaries, amalgamation, abolition or reconstitution of internal drainage districts and boards and the abolition of all commissioners of sewers in the area.

For constitution, powers and functions of catchment boards, and generally herein, see title CATCHMENT BOARDS in Vol. II. [24]

Drainage Districts and Boards.—Drainage districts constituted under the Act are such areas as will derive benefit or avoid danger as a result of drainage operations (sect. 1 (5)). Each drainage district is administered by an elective drainage board, who are a body corporate with power to hold land without licence in mortmain, and they exercise a general supervision over all matters relating to drainage of land in their district (sect. 1 (2), (3)).

Drainage districts may be constituted within a catchment area by a scheme prepared under sect. 4 by the catchment board and confirmed by the Minister (*l*). These districts are called "internal drainage districts" and each is administered by an "internal drainage board" as defined in sect. 81. Under such a scheme, in addition to the alteration of boundaries, and other reorganisation powers with respect to drainage districts and drainage boards, the constitution of any existing drainage board may also be amended so as to secure that the members shall be elected in accordance with Part V. of the Act (sect. 4 (1) (b)).

The Minister may, by an order under sect. 17, constitute as a drainage district an area not comprised within a catchment area (*m*). The

(*k*) S.R. & O., 1934, No. 626.

(*l*) For procedure, see title DRAINAGE BOARDS in Vol. V.

(*m*) These orders, if opposed, are provisional only, and require confirmation by Parliament. As to petitions and procedure for making, and opposition to, such orders, see s. 18 and Second Schedule; and Land Drainage (General) Regulations, 1932 (S.R. & O., 1932, No. 69), Art. 7. As to expenses of the Minister see s. 19.

order may also provide for the alteration of boundaries, abolition, or reconstitution of such drainage districts, for amending the constitution of the drainage boards so as to secure that the members shall be elected in accordance with Part V. of the Act, and for the abolition of any commission of sewers.

For constitution, powers and functions of drainage boards see, generally, title DRAINAGE BOARDS in Vol. V. [25]

Commissioners of Sewers. *Jurisdiction and Functions.*—By sect. 1 of the Statute of Sewers (*n*) commissioners of sewers were required (i.) to survey the walls, ditches, banks, and various other defences by the coasts of the sea and marsh ground, and impediments, lets, and annoyances to navigation and the flow of rivers, and to cause the same to be corrected, repaired, amended, put down or reformed; (ii.) to inquire by jury through whose default the hurts and damages have happened and assess the persons who should contribute to the cost of the necessary work and repairs; (iii.) to appoint keepers, bailiffs, surveyors, collectors and other officers to distrain for arrears of any assessments, etc.; (iv.) to arrest and take carts, horses and other instruments necessary and sufficient workmen and labourers, paying competent wages for them; and trees, timber and other necessaries at a reasonable price; (v.) to make and direct writs, precepts and warrants to sheriffs, bailiffs and other officers; (vi.) to punish by distress, fine and amerciaments anyone negligent or disobeying their orders. They were also empowered to make, constitute and ordain laws, ordinances and decrees, and to amend and repeal the same (*o*).

This jurisdiction was extended by subsequent statutes, particularly by the Sewers Act, 1833 (*p*). Sect. 19 of this Act (*q*) authorised the commissioners to construct and maintain new works, and alterations to old or existing works; and to abandon any former works and make new works in lieu of them. But before any new works were made the consent of the owners and occupiers of at least three-fourths part in value of the lands and hereditaments proposed to be charged with the costs and expenses had to be obtained (sect. 21).

Their powers were further extended by the Land Drainage Act, 1861 (*r*), and although by sect. 60 these were to be in addition to any other powers conferred on commissioners by Act of Parliament, law or custom, the later powers in effect superseded the powers given by the earlier Acts (*s*). They include the maintenance and the improvement of existing works and the construction of new works (*t*). Full compensation must be made for all injury sustained by any person by reason of the exercise of these powers (*u*).

By a saving in sect. 54 of the Act (*a*), the commissioners have no authority, without the express consent of the owners, to interfere with, so as injuriously to affect, sewers or other land drainage works made

(*n*) 17 Halsbury's Statutes 985.

(*o*) Statute of Sewers, s. 4; 17 Halsbury's Statutes 980. (*p*) *Ibid.*, 1000.

(*q*) *Ibid.*, 1011.

(*r*) *Ibid.*, 1045.

(*s*) As the consent of proprietors is required in certain cases these powers will, doubtless, in their turn, be superseded by those under the Land Drainage Act, 1890, which can be exercised without such consents.

(*t*) For details of the powers included under these expressions see s. 16. No work is a new work if in substitution for an old work so out of repair or inefficient as to make it expedient to construct a new work in its place (*ibid.*).

(*u*) Act of 1861, s. 16, proviso (3); 17 Halsbury's Statutes 1050.

(*a*) 17 Halsbury's Statutes 1064.

under any local or private Act; or with the works or supply of water of any body or persons supplying water to any town or place; or to interfere with any river, canal, dock, harbour, lock, reservoir, or basin, or the supply of water thereto, so as injuriously to affect the navigation, use, or maintenance thereof; or to interfere with any towing-path so as to interrupt traffic; or to execute works in, through, or under any wharves, quays, docks, harbours, or basins belonging to proprietors of any inland navigation constituted by Act of Parliament, or for the use of which they are entitled by an Act to demand tolls or dues. They may not divert any river so as to injure or diminish the supply of water to any harbour without consent, and rivers, canals, and inland navigations and the works belonging thereto, exempt under any local or private Act, are not liable to the control of the commissioners (sects. 55, 57). [26]

Meetings of Commissioners.—The meetings of commissioners, called courts of sewers (*b*), may be held at places within or not more than ten miles from some part of their district (*c*). A chairman has to be appointed at every meeting, and he has a casting vote (*d*). Three commissioners form a quorum (*e*). [27]

Officers.—The commissioners may appoint and pay officials to carry out their various duties in every distinct level or district (*f*). These officers include clerks, surveyors, collectors, treasurers, expeditors and dyke-receives. They may be required to give security (*g*). The clerk or his partner or anyone in his employ cannot be appointed as treasurer, or his deputy, and *vice versa* (*h*). [28]

Procedure of Commissioners.—Prior to the Act of 1861, the commissioners, before making an order in respect of the execution of any work, proceeded by presentment of a jury (*i*), but sect. 13 of that Act enabled them to make orders without such presentment. Orders made without presentment of a jury may be appealed against to quarter sessions and determined by the justices or by arbitration (*k*). [29]

Legal Proceedings.—Commissioners may sue and be sued in the name of any commissioner or of the clerk; and actions do not abate by the death, removal, or retirement of the clerk or commissioner. The person in whose name proceedings are taken may be reimbursed his costs, damages and expenses (*l*). [30]

Drainage Rates.—Prior to the passing of the Land Drainage Act, 1930, the principle of rating in force for defraying the expenses incurred in connection with land drainage was to rate, according to acreage, the hereditaments which actually derived benefit or avoided danger by reason of the operations of the drainage authority. Sect. 1 of the

(*b*) Sewers Act, 1833, s. 60; 17 Halsbury's Statutes 1033.

(*c*) Sewers Act, 1841, s. 11; *ibid.*, 1039. See also Sewers Act, 1833, ss. 8, 45; *ibid.*, 1004, 1025.

(*d*) Sewers Act, 1833, s. 8; *ibid.*, 1004.

(*e*) Land Drainage Acts, 1861, s. 15; *ibid.*, 1050; and 1918, s. 14; *ibid.*, 1084.

(*f*) Sewers Act, 1833, s. 14; *ibid.*, 1008.

(*g*) *Ibid.*, s. 50; *ibid.*, 1028.

(*h*) *Ibid.*, s. 51; *ibid.*, 1029.

(*i*) As to this procedure, see *ibid.*, ss. 11, 12; *ibid.*, 1005—1007.

(*k*) Land Drainage Act, 1861, ss. 47—50; *ibid.*, 1062—1063. Instead of proceeding in this manner commissioners may now, of course, proceed under the Act of 1930.

(*l*) Sewers Act, 1833, ss. 57, 58; *ibid.*, 1032, 1033.

Statute of Sewers (*m*) authorised the commissioners to tax, assess and charge any person "who hath or holdeth any lands or tenements or common of pasture or profit of fishing or hath or may have any hurt, loss or disadvantage" within the area, "after the quantity of their lands, tenements and rents by the number of acres, after the rate of every person's portion, tenure or profit, or after for the quantity of their common of pasture or profit of fishing." Thence was derived the principle of "no benefit, no rates" (*n*).

The Act of 1930 changed this principle. As to its provisions see the title DRAINAGE RATES in Vol. V. [31]

Powers and Duties of County and County Borough Councils.—*Appointments to Catchment Boards.*—Councils of counties and county boroughs have the right under sect. 3 (2) of the Act of 1930 of appointing members of a catchment board where any part of their area is situate within the catchment area. The order of the Minister for the constitution of the board prescribes the number to be so appointed by each council, and under sect. 3 (3) this number is to be based on the amounts contributed by the council towards the expenses of the catchment board (*o*). [32]

Opposition to Schemes.—Copies of any reorganisation scheme made by a catchment board, when submitted for the approval of the Minister, must be sent to county, borough and district councils affected (sect. 4 (2)). Any such council have the right to present a memorial to the Minister against an order confirming such a scheme, and to oppose its confirmation in Parliament (*p*). [33]

Agreements with Catchment Boards.—The council of any borough or urban district may enter into an agreement with a catchment board to execute, on agreed terms, any work which the board are authorised to carry out in connection with the main river (sect. 6 (4)). [34]

Petitions for Constitution of Drainage Boards, etc.—A petition for an order for (1) the constitution of a drainage board and separate drainage district for any area not comprised in a catchment area; (2) altering the area of any drainage district; (3) abolishing or reconstituting any drainage district and drainage board; (4) abolishing any commission of sewers; or (5) altering or supplementing any local Act or award made under any such Act, may be presented to the Minister under sect. 18 (2) of the Act by the council of a county or county borough in which any part of the drainage area or of the land proposed to be affected is situate (*q*). [35]

Powers of Catchment and Drainage Boards.—Sect. 50 (1) of the Act confers upon the council of a county, or of a county borough, in respect of land within their area, but not under the jurisdiction of a catchment board, all such powers as are given to (i.) catchment boards by sect. 10

(*m*) 17 Halsbury's Statutes 985.

(*n*) See *Keighley's Case* (1609), 10 Co. Rep. 130a; 41 Digest 54, 390; and *Isle of Ely Case*, *ibid.*, 141a; 41 Digest 51, 373.

(*o*) See, as to the appointment of these members, title CATCHMENT BOARDS. They may also appoint members of river pollution authorities constituted by provisional order under s. 56; 23 Halsbury's Statutes 569.

(*p*) Ss. 3, 13, Sched. II., Part II.; Land Drainage (General) Regulations, 1932 (S.R. & O., 1932, No. 64), Art. 7.

(*q*) The Minister may in cases (1), (2), and (4) make an order on his own initiative, after consultation with any county or county borough council affected (s. 18 (1)). He must also consult with such councils on any petition for an order under s. 17 if not presented by them (*ibid.*). These orders, if opposed, are provisional only and require confirmation by Parliament.

(except sub-sect. (4)) of the Act, and (ii.) to drainage boards by sects. 36 and 44 of the Act (r). Sect. 50 (2) also confers upon such councils, as respects any land in the county or borough, whether within a catchment area or not, all the powers given to drainage boards by sect. 35 of the Act (s). Sect. 50 (3) allows the Minister by order, to transfer to a county council the functions, obligations, and property of a drainage board of a drainage district situate in any part of the county which is not within a catchment area. [36]

Powers of Drainage Board in Default.—On an application made under sect. 10 (4) of the Act by the council of any county or county borough, the whole or part of whose area is within a catchment area, a catchment board may direct that the powers given to the catchment board of exercising the powers of an internal drainage board in default, shall be exercisable by the council as respects land in that part of the council's area (t). If the catchment board refuse such an application the council have a right of appeal to the Minister (t). [37]

Revocation of Navigation Authorities' Functions.—A county or county borough council may apply to the Minister for an order under sect. 41, revoking, varying, or amending the provisions of any local Act relating to navigation rights over waters in their area not within a drainage district (sect. 50 (4)). [38]

Complaint against Catchment Boards.—Under sect. 12 of the Act the council of any county, borough or district, may complain to the Minister that a catchment board have failed to keep the main river in a due state of efficiency. [39]

Contributions to Catchment Boards.—The councils of counties or county boroughs situate within, or extending into, a catchment area, are liable under sect. 20 to contribute towards the expenses of the catchment board on the basis of the total rateable values of the areas of the respective councils within the catchment area (u). The amount required is levied by precept (sect. 22) and, for this purpose, the councils are required to furnish to the catchment board a true and correct statement of such totals (sect. 20 (4)).

The aggregate amount which may be demanded from these councils in any financial year must not exceed the estimated produce of a twopenny rate, unless the majority of the members of the board who are appointed by such councils, consent (a).

If any such council are aggrieved by a resolution of the catchment board as to the contribution to be made to or by the board by or to an internal drainage board, on the ground, either that the amount required to be paid by an internal drainage board is inadequate, or the amount to be contributed by the catchment board to the internal drainage board is excessive, they may appeal against it under sect. 21 (5) to the

(r) S. 10 (4) relates to the exercise by the council of the powers of a drainage board; s. 36 has reference to the enforcement of obligations to repair watercourses, bridges, etc.; s. 44 deals with mill dams, weirs and other obstructions in watercourses.

(s) S. 35 deals with the maintenance of the proper flow of watercourses.

(t) The catchment board may, subject to the Minister's consent, and on giving the council six months' notice, revoke any direction under this sub-section, but without prejudice to the board's right to give a new direction (*ibid.*).

(u) As to contributions by local authorities under the P.H.As., for the maintenance of drainage works, see s. 32 of the Act of 1930.

(a) S. 22 (2). Under the proviso, a consent to an increase may be given which will continue during the currency of a loan. Any sums paid are to be defrayed by the councils in the manner laid down in s. 23.

Minister (*b*). After considering the objections, and, if he thinks fit, holding a local public inquiry, the Minister may make such order as he thinks just. [40]

Schemes for Drainage of Small Areas.—Where the council are of opinion that any land within the county or county borough (whether the land is within a catchment area or not) is capable of improvement by drainage works, but that the case cannot be met by the constitution of a drainage district, and that the expenses of executing and maintaining the works will not exceed the increase in the value of the land arising therefrom, they may under sect. 52 (1) make a scheme, enter on the lands, and execute such drainage works as appear to them desirable (*c*).

For these purposes the council have all the powers of a drainage board, but subject to the restrictions imposed by the Act on the exercise of those powers (sect. 52 (4)).

The expenses incurred by the council, not exceeding the maximum declared by the scheme, are recoverable summarily as a civil debt from the owners of the lands to which the scheme relates (sect. 52 (5)). Owners may, however, require the council to recover the sum due by levying a rate in the same manner, and with like incidence, as a rate for private improvement expenses under the P.H.A., 1875 (*d*); and to determine the proportion of rate to be borne by them respectively, having regard to the benefit derived and other circumstances of the case. [41]

Entry upon Land.—County and county borough councils may authorise a person to enter on and inspect land for the purpose of the exercise of their functions under the Act (sect. 51 (1)). Any one obstructing or impeding a person so authorised, in the execution of his duties, is liable on summary conviction to a fine not exceeding £20 (sect. 51 (2)). [42]

Expenses of Councils.—Expenses of councils under the Act (except in so far as by the Act otherwise to be defrayed (*e*)) are under sect. 53 (1) to be defrayed (1) in the case of a county, out of the county fund as expenses for general county purposes, or as special expenses charged on such parts of the county as the council think fit; and (2) in the case of a county borough, out of the general rate fund.

By sect. 53 (2) a county council or county borough council may borrow for the purposes of the Act; but the remainder of the subsection is repealed by the L.G.A., 1933, and replaced by sects. 195 to 203 of the Act (*f*). [43]

Delegation to Committees.—By sect. 53 (8) a county council or county borough council may delegate their powers (other than the power to

(*b*) The appeal must be within six weeks after notice of the resolution is given to the internal drainage board. Where the Minister makes an order he must lay particulars before Parliament, giving the reasons for his decision (s. 21 (6)).

(*c*) The draft scheme must contain the particulars required by sub-s. (2); and the other prescribed requirements as to service of notices, etc., must be complied with. The council must consider any objections made, and if objections are made by the owners of one-half or more of the land comprised within the area, and not withdrawn, a public inquiry must be held on the scheme. See s. 52 (2), and the Land Drainage (General) Regulations, 1932 (S.R. & O., 1932, No. 64), Art. 4. When settled, copies of the scheme must be served on the owners and occupiers of the land in the area (s. 52 (3)).

(*d*) See ss. 213—215 of that Act; 13 Halsbury's Statutes 715, 716.

(*e*) See e.g. s. 23 (Contributions to Catchment Boards), and for expenses in respect of schemes for the drainage of small areas, s. 52 (5).

(*f*) 26 Halsbury's Statutes 412—416.

levy a rate or borrow money) to their agricultural committee, or, if they have no agricultural committee, to such committee as they think fit, and any such committee may, subject to the directions of the council, delegate any of their powers and duties, with or without restrictions, to a sub-committee.

The councils of two or more counties or county boroughs may combine for the joint exercise of their powers by the appointment of a joint committee, and agree as to the proportions of their representation thereon, and of contributions towards expenses (sect. 53 (4)). But if a council have an agricultural committee, their representatives on such a joint committee must be members of the agricultural committee (*ibid.*). [44]

Saving of Existing Powers.—The powers conferred on councils by or in pursuance of the Act, except as otherwise expressly provided in the Act, are in addition to any other powers of any such councils, independently of the Act of 1930 (sect. 54). Any protective provisions contained in any local Act are applicable to such powers in like manner as they apply to the exercise of the powers under the local Act (*ibid.*). [45]

Execution of Works by Landowners.—Where any land suffers injury by reason of the neglect of the occupier of any land to maintain, or join in maintaining, the banks, or to cleanse and scour, or join in cleansing and scouring, the channels of watercourses passing through, over, or adjoining his lands, the owner or occupier of the injured land may serve notice on the said occupier, requiring him to do, or join in doing, the necessary works (Act of 1930, sect. 57 (1)). In default of compliance within two months after service of such notice, the person serving the notice may execute all such works as are reasonably necessary and recover the expenses, or a just proportion thereof, summarily as a civil debt from the occupier in default (sect. 57 (2)) (g).

A person interested in any land who desires to drain it, and, for that purpose, considers it necessary that new drains should be opened through, or existing drains in land belonging to another person should be cleansed, widened, straightened, or otherwise improved, may apply in the manner prescribed by regulations of the Minister (h), to the adjoining owner for leave to make such drains, or improvements in drains, through, or on his lands (sect. 58 (1)). The application must contain the prescribed particulars as to the nature of the proposals and the compensation, if any, which the applicant is willing to pay (sect. 58 (2)).

Part III. of the Fifth Schedule to the Act provides for new drains or improvements after the drains have been opened, or improvements made on an adjoining owner's land. The persons for the time being interested in the land for the benefit of which the work was done may

(g) See also s. 35 as to powers of drainage boards to require a landowner to execute works where the flow of a watercourse under his control is impeded, and title DRAINAGE BOARDS; also as to powers of councils of counties and county boroughs, s. 50 (2).

(h) See the Land Drainage (General) Regulations, 1932 (S.R. & O., 1932, No. 64), Art. 5. The procedure to be followed is set out in the Fifth Schedule to the Act. An owner assenting to the application must do so by deed which is deposited with the clerk of the peace of the county (Sched. V., Part I.). If he dissents, the matter is referred to the justices in petty sessions, unless the adjoining owner requires a decision by arbitration, and if the injury cannot be fully compensated by money the work cannot be proceeded with (Sched. V., Part II.).

from time to time when necessary, cleanse, scour, and otherwise maintain the drains in a due state of efficiency. If this is not done, the owner or occupier of the lands through, or on which the drains, or improvements in drains, were made, may carry out the necessary work and recover the expenses in a summary manner from the defaulters. Such owner (i) may also fill up, divert, or otherwise deal with the said drains, or improvements in drains, subject to making, in lieu thereof, drains equally efficient. Any dispute as to the efficiency of such drains is to be decided by the justices in petty sessions. Any person who wilfully (1) obstructs any person making, or (2) dams up, obstructs, or injures, any drains or improvements in drains, is liable to a penalty not exceeding £10. [46]

Orders for Execution of Works.—Where any persons interested in land are of opinion that it is capable of improvement by drainage works (k) but such works cannot be executed owing to the objection or disability of any person whose land would be entered upon, cut through, or interfered with, they may apply under sect. 59 (1) to the Minister in the prescribed form, for an order authorising the execution of such drainage works as are expedient (l). If the application is not objected to, or any objection made is withdrawn, the Minister may make the order, but if an objection is made and not withdrawn, the Minister must hold a public inquiry in the locality (sect. 59 (5), (6)).

The persons authorised by an order have full power to execute the works and to maintain them for ever thereafter, but they must not enter on the land till any compensation awarded is paid (sect. 59 (7)). No order can authorise any work whereby streams, reservoirs, or feeders supplying ornamental waters will be cut through, diverted or interfered with, except with the consent of the owners of such ornamental waters (sect. 59 (8)). [47]

Rivers Pollution Authorities for Catchment Areas.—A joint committee, or other body, having the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876 (m), may be constituted under sect. 56 (1) by a provisional order of the M. of H. without an application of a local authority for the order being necessary. The order must, however, provide for the inclusion, so far as may conveniently be, on the committee, or body so constituted, of persons appointed by county or county borough councils as members of the catchment board of the catchment areas concerned (sect. 56 (2)). Such a committee, or body, and the catchment board of the area, may enter into arrangements for co-operation in the discharge of their respective functions, including payment for services rendered by either party to the other (sect. 56 (8)). [48]

Local Inquiries.—The Minister may hold such inquiries as he considers necessary or desirable for the purposes of the Act of 1980, and may, subject to payment or tender of reasonable expenses, order the attendance of any witness to give evidence and produce documents which would be subject to production in a court of law (sect. 72 (1)). The person holding the inquiry (if so authorised by the Minister) may

(i) But not the occupier.

(k) See definition of "drainage" in s. 81; 23 Halsbury's Statutes 582.

(l) For procedure and the prescribed form and particulars see s. 59 (3) (4), and Land Drainage (General) Regulations, 1932 (S.R. & O., 1932, No. 64), Art. 6.

(m) 20 Halsbury's Statutes 316.

address a similar order to a witness, and any witness failing without reasonable excuse to comply with such an order is liable on summary conviction to a fine not exceeding £5 (*ibid.*). The person holding the inquiry may take evidence on oath and administer oaths (*ibid.*).

The fee to the Minister for holding an inquiry is a sum not exceeding five guineas a day (*n*). [49]

Regulations.—The Minister may under sect. 74 make regulations for the purpose of prescribing anything which may be prescribed under the Act of 1930, and generally for carrying the Act into effect. Such regulations when made are to be laid before both Houses of Parliament. If an address is presented to His Majesty by either House, within the next subsequent twenty-eight days on which that House has sat, praying that any regulation be annulled, it is thenceforth void, but without prejudice to the validity of anything done thereunder, or to the making of new regulations. [50]

Compensation to Existing Officers.—An officer of a drainage board who immediately before August 1, 1930, had held office for not less than two years, is entitled by sect. 67 to compensation if, by virtue of the Act, or anything done in pursuance or in consequence of it, he suffers direct pecuniary loss by abolition of office, or determination of his appointment, or diminution or loss of fees, salary, or emoluments. If within five years an officer resigns through having been called upon to perform duties not analogous, or an unreasonable addition, to those he formerly performed; or is dismissed or has his salary reduced because his services are not required, or his duties are diminished, is, unless the contrary be shown, deemed to have suffered a direct pecuniary loss (sect. 67 (3)).

Compensation is determined and paid in accordance with the Eighth Schedule to the L.G.A., 1929 (*o*), and any questions arising are to be determined by the Minister of Health (sect. 67 (4), (5)). [51]

Savings.—By sect. 60 the Act of 1930 is not to authorise any contravention of the Ancient Monuments Consolidation and Amendment Act, 1913 (*g*); and by sect. 62 of the Act of 1930 that Act is not to prejudice or affect the Salmon and Freshwater Fisheries Act, 1923 (*r*). In the exercise of powers under the Act due regard must be had to fishery interests (sect. 62 (2)).

By sect. 61 neither the Act nor any order made under it, may authorise any person, except with the consent of the undertakers, to do any work directly or indirectly interfering with the works, or use of works, or property, of statutory public utility undertakings carried on by local authorities; or the undertakings of water or electricity undertakers, or a navigation, harbour, or conservancy authority, or of a railway company.

Any question arising under sect. 61 is to be referred to a single arbitrator appointed, failing agreement between the parties, by the President of the Institution of Civil Engineers on the application of either party (sect. 61 (8)). [52]

(*n*) Scale of fees in S.R. & O., 1934, No. 626.

(*o*) 10 Halsbury's Statutes 987.

(*g*) 12 Halsbury's Statutes 392. Amended by the Ancient Monuments Act, 1931: 24 Halsbury's Statutes 296.

(*r*) 8 Halsbury's Statutes 780.

Application of Act to the Crown, etc.—The Act is by sect. 77 (1) to apply to lands belonging to the Crown, the Duchies of Lancaster and Cornwall, and to a Government department, subject to certain restrictions set out in the provisos to the sub-section, with additional restrictions as to tidal lands (*s*). [53]

London.—Sect. 78 of the Land Drainage Act, 1930 (*t*), provides that the Act shall not apply to the administrative County of London, except to such portion thereof as is for the time being included in the Lee Conservancy Catchment Area, and nothing in the Act or any order made thereunder is to affect any property of, or prejudice the exercise of any statutory power, authority or jurisdiction for the time being vested in or exercisable by the L.C.C. [54]

(*s*) For definition see s. 77 (2).

(*t*) 23 Halsbury's Statutes 579.

LANDS CLAUSES ACTS

See ACQUISITION OF LAND; COMPENSATION ON ACQUISITION OF LAND; AND COMPULSORY PURCHASE OF LAND.

LATHES

See HUNDREDS.

LAUNDRIES

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See also titles : FACTORIES AND WORKSHOPS ;
HOMEWORK.
RATING OF SPECIAL PROPERTIES.

Application of Factory and Workshop Act, 1901, to Laundries.—By virtue of sect. 1 of the Factory and Workshop Act, 1907 (*a*), laundries, if carried on by way of trade or for the purposes of gain, or carried on as ancillary to another business or incidentally to the purposes of any public institution, are included in Part II. of the Sixth Schedule to the Factory and Workshop Act, 1901 (*b*), that is, they are to be regarded either as non-textile factories or as non-textile workshops to which the general provisions of the principal Act apply, according to whether steam, water or other mechanical power is or is not used in aid of the manufacturing process carried on there (*c*).

It will be observed that the section excludes the laundries of private houses where linen of the family, servants and visitors is washed, but includes laundries of hotels where visitors' linen or indeed hotel linen only is washed, as being ancillary to the business (*d*), and laundries of public institutions even though not carried on for purposes of gain or by way of trade. An orphanage supported by public subscription is a public institution (*e*), as also is a school supported by private subscriptions (*f*). [55]

In construing the phrase "steam, water or other mechanical power" in the definition of "textile factory" in sect. 149 of the Act of 1901 for the purpose of deciding whether a laundry is a factory or a workshop, the words "other mechanical power" are *ejusdem generis* with steam power, and thus do not include hand or animal power (*g*). The phrase "manufacturing process" used in the same section does not necessarily refer to something being produced but to the business carried on, and a laundry which is carried on for the purpose of gain

(a) 8 Halsbury's Statutes 607. S. 7 (3) of the Act repealed s. 103 of the Factory and Workshop Act, 1901.

(b) 8 Halsbury's Statutes 606.

(c) S. 149 ; 8 Halsbury's Statutes 593.

(d) Overruling *Caledonian Railway Co. v. Paterson* (1898), 1 F. (Ct. of Sess.) (J.) 24 24 Digest 903 c. See *Sadler v. Roberts* (1911), 105 L. T. 106 ; 24 Digest 903, 41.

(e) *Seal v. British Orphan Asylum* (1911), 104 L. T. 424 ; 24 Digest 902, 31.

(f) *Royal Masonic Institution Trustees v. Parkes*, [1912] 3 K. B. 212 ; 24 Digest 902, 32.

(g) *Willmott v. Paton*, [1902] 1 K. B. 237 24 Digest 897 1.

and in which mechanical power is used for driving the machines used in aid of the work of washing clothes is a non-textile factory within the definition (*h*).

It should be borne in mind in considering the application to laundries of the general provisions of the Act of 1901 that some of those laundries which are to be treated as factories may come within the definition of "domestic factory," and some of those which are to be treated as workshops may come within the definition of "domestic workshop" (*i*).

The duties of local authorities with regard to factories and workshops will be found stated under appropriate headings in the title FACTORIES AND WORKSHOPS. [56]

Employment of Young Persons.—Sect. 2 of the Act of 1907 (*k*) contains special provisions with reference to the hours and conditions of employment of women and young persons in laundries (other than laundries ancillary to a business carried on in any premises which apart from the Act of 1907 would be a factory or workshop), such provisions being additional to the general provisions as to their employment in factories and workshops. These requirements are enforced by factory inspectors and not by local authorities. [57]

Special Regulations as to Ventilation and Drainage.—Sect. 8 of the Act of 1907 (*l*) re-enacts sect. 103 (3) of the Act of 1901, but extends it to every laundry, whether workshop or factory, and provides that if mechanical power (*m*) is used, a fan or other efficient means shall be provided, maintained, and used for regulating the temperature in every ironing room, and for carrying away the steam in every wash-house; that all stoves for heating irons must be sufficiently separated from any ironing-room or ironing-table, and gas irons emitting any noxious fumes must not be used; and that the floors must be kept in good condition and drained in such manner as will allow the water to flow off freely.

A laundry in which there is a contravention of any of these provisions is to be deemed a factory or a workshop not kept in conformity with the Act of 1901. Offences in laundries against the provisions as to floors are therefore punishable under the Factory Acts (*n*). Offences against sect. 8 of the Act of 1901 (*o*) (which also deals with the drainage of floors) are punishable according to that section in the case of factories under the Factory Acts and workshops under the P.H.As. It would seem, however, that this provision is superseded by sect. 8 of the Act of 1907. [58]

Application of Provisions as to Domestic Workshops.—The exercise in a private house or private room by the family dwelling therein of manual labour for the purpose of gain in or incidental to the making,

(*h*) *Owner v. Cottingham Sanitary Steam Laundry Co., Ltd.* (1910), 102 L. T. 571; 24 Digest 901, 23; followed in *Johnston v. Lalonde*, [1912] 3 K. B. 218; 24 Digest 901, 24.

(*i*) See s. 115 of Act of 1901; 8 Halsbury's Statutes 577.

(*j*) 8 Halsbury's Statutes 608.

(*l*) *Ibid.*, 609. See also ss. 6, 7 and 74, Act of 1901 (*ibid.*, pp. 521, 555), containing provisions as to temperature and ventilation which must also be observed, and title FACTORIES AND WORKSHOPS.

(*m*) See *Willmott v. Paton*, note (*g*), *ante*, p. 23.

(*n*) For the penalty for offences, see s. 135 of the Act of 1901; 8 Halsbury's Statutes 587.

(*o*) 8 Halsbury's Statutes 522. See title FACTORIES AND WORKSHOPS.

altering, repairing, ornamenting, washing, cleaning or finishing of any article is not of itself to constitute that house or room a workshop within the meaning of the Act where the labour is exercised at irregular intervals, and does not furnish the whole or principal means of living to the family (p). [59]

Inspection.—Attention should be drawn to sect. 6 of the Act of 1907 (q) which provides that where in any premises subject to inspection by a Government department any manual labour is exercised, otherwise than for the purpose of instruction, in or incidental to the making, altering, repairing, ornamenting, finishing, washing, cleaning or adapting for sale of any article, and the premises do not constitute a factory or workshop by reason that the work carried on therein is not carried on by way of trade or for the purposes of gain, or by reason that the persons employed are not working under a contract of service or apprenticeship, the Secretary of State may arrange with the department that the premises shall as respects the matters dealt with by the Act of 1901 be inspected by an inspector appointed under that Act. Where such an arrangement is made, inspectors appointed under the Act of 1901 have, as respects such matters, the like right of entry and inspection as the inspectors of the department concerned. [60]

Laundries and Infectious Disease.—By sect. 55 of the P.H.A. Amendment Act, 1907 (r), a person must not take or send to any laundry, for the purpose of being washed, any bedding, clothes or other things, which he knows to have been exposed to infection from any infectious disease (s), unless they have been disinfected by or to the satisfaction of the local authority, their M.O.H., or a doctor, or are sent to the laundry with proper precautions for the purpose of disinfection, and with notice that the things have been exposed to infection. The council may on application pay the expenses of disinfection of any such things, if carried out by them or under their direction. A contravention of the section involves a fine not exceeding 40s.

Homework.—The washing of wearing apparel is dealt with among other matters in sect. 110 of the Act of 1901 (t) relating to homework; but the section does not cover the washing of articles such as bedding or towels. Moreover, the section refers only to a "house" with inmates, and would not extend to a laundry building that was neither a dwelling-house nor attached to a dwelling-house.

Rating.—As to rating of laundries as industrial hereditaments, see title DERATING. [61]

London.—The position in London is the same as elsewhere. The London note to the title FACTORIES AND WORKSHOPS at p. 415 of Vol. V., as to the exercise of powers in London, is applicable here. [62]

(p) S. 114 of the Act of 1901 as applied to laundries by s. 4 of the Act of 1907; 8 Halsbury's Statutes 576, 609.

(q) 8 Halsbury's Statutes 611.

(r) 13 Halsbury's Statutes 931. In force only in those areas outside London to which it has been applied by order of the M. of H. under s. 3 of the Act. On October 1, 1937, this section will be replaced by P.H.A., 1936, s. 152, which operates without an order. Sub-s. (3) contains a new provision, based on local Acts, and requires the occupier of a building in which there is a person suffering from a notifiable disease to furnish the local authority on request with the name and address of any laundry, washhouse or other place to which articles from the house have been or will be sent, for the purpose of being washed or cleaned.

(s) I.e. any infectious disease to which the Infectious Disease (Notification) Act, 1889, applies within the borough or district. See s. 18 of the Act of 1907; 13 Halsbury's Statutes 915.

(t) 8 Halsbury's Statutes 574. Also replaced by P.H.A., 1936, s. 153.

LAVATORIES

See SANITARY CONVENIENCES ; PUBLIC LAVATORIES.

LAW COSTS

See COSTS.

LAYING OUT OF STREETS

See ROAD MAKING AND IMPROVEMENT ; TOWN AND COUNTRY PLANNING.

LEAD POISONING

See ALKALI, ETC., WORKS.

LEASE

See CORPORATE LAND ; DISPOSAL AND UTILISATION OF LAND ; LESSEE, LOCAL AUTHORITY AS.

LEE CONSERVATORS

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See also titles :

CATCHMENT BOARDS ;
CONSERVANCY AUTHORITIES ;
DRAINAGE BOARDS ;

LAND DRAINAGE ;
POLLUTION OF RIVERS ;
THAMES CONSERVATORS.

Introductory.—The River Lee rises in the county of Bedford near Dunstable, and after flowing through the counties of Bedford, Herts, Essex, Middlesex and London enters the River Thames at Blackwall. There is also an artificial channel known as the Limehouse Cut which runs from Bromley-by-Bow and joins the Thames at Limehouse. The total length of the river is approximately 56 miles, and its chief tributaries are the Rivers Mimram, Beane, Rib, Ash and Stort. The river has been important from early times and one of the first records is to be found in the Treaty of Wedmore (A.D. 879) between King Alfred and the Danes when the River Lee from its junction with the Thames to its source was fixed as one of the boundaries of the Danelaw.

The earliest Acts dealing with the river appear to be those of 3 Henry 6, c. 5 and 9 Henry 6, c. 9. These Acts empowered the Chancellor of England to grant commissions to certain persons to reform the river by the removal of obstructions, etc. By 18 Eliz. c. 18 the lord mayor, commonalty and citizens of London were authorised to construct and maintain a new cut in connection with the river. By the River Lee Act, 1739 (*a*), a body of trustees (including the lord mayor, aldermen and recorder of the City of London) was established for the management of the navigation of the river and for the regulation of the abstraction by the New River Company of its water. By the River Lee Act, 1766 (*b*), the number of trustees was considerably increased and further powers conferred, but by the Lee Conservancy Act, 1868 (*c*), the trustees were abolished and their jurisdiction transferred to the Lee Conservancy Board established by that Act. By the Lee Conservancy Act, 1900 (*d*), the board was reconstituted. The powers and duties of the board were also dealt with by the River Lee Acts of 1778 (*e*) and 1805 (*f*); the Lee Navigation Improvement Act, 1850 (*g*); the River Lee Water Act, 1855 (*h*); the Lee Conservancy

(*a*) 12 Geo. 2, c. 32.
(*c*) 31 & 32 Vict. c. cliv.
(*e*) 19 Geo. 3, c. 58.
(*g*) 13 & 14 Vict. c. cix.

(*b*) 7 Geo. 3, c. 51.
(*d*) 63 & 64 Vict. c. cxvii.
(*f*) 45 Geo. 3, c. lxi.
(*h*) 18 & 19 Vict. c. cxvii.

Act, 1874 (*i*); the Canal Tolls and Charges, No. 6 (River Lee, etc.) Order Confirmation Act, 1894 (*j*); the River Lee Watershed (Flood Prevention) Act, 1920 (*k*); the Lee Conservancy Act, 1921 (*l*); and the River Lee (Flood Relief, etc.) Act, 1930 (*m*), in addition to the Acts above mentioned. The regnal year and chapter of the Acts mentioned above will not as a rule be repeated in the footnotes. [63]

Constitution of Board.—The board as reconstituted by the Lee Conservancy Act of 1900 (*n*) consists of fifteen members, appointed and elected as follows, viz. :—

(A) *Ten Appointed Members* : Two each by the L.C.C. and the Metropolitan Water Board, one each by the county councils of Bedford, Herts, Essex, and Middlesex, and one each by the corporations of London and West Ham.

(B) *Five Elected Members* : One by twenty-one local authorities in Herts mentioned in the Schedule to the Act; one by the local authorities in Essex mentioned in the Schedule; one by the local authorities in Middlesex mentioned in the Schedule; one by the metropolitan borough councils of Hackney, Stepney and Poplar jointly; and one by the barge owners.

The members hold office for three years, and the appointments and elections are regulated by the Lee Conservancy Acts, 1900 and 1921. The board are a public authority and a canal authority and for various purposes connected with the tidal water are a harbour authority. [64]

Jurisdiction and Functions of Conservators. *Navigation.*—The Lee Navigation extends from the town mill at Hertford to the Thames at Blackwall and Limehouse. The southern termination of the Navigation in Bow Creek is marked by the "south boundary stones" where the board's jurisdiction is divided from that of the Port of London Authority. These stones are just below the Canning Town Bridge. The navigation channel consists of the ancient River Lee and of various artificial canals or cuts, the total lengths of Old River and of cuts being approximately equal. In addition, there are a number of navigable channels known as the Stratford Back Rivers which are under the board's jurisdiction. The total length of the Navigation is thirty-three miles. The lower portion of it, including the Limehouse Cut, is tidal to the tail of Old Ford Locks and to the lock at Carpenter's Road, Stratford. On the Old River Lee the tide extends as far as Temple Mills. The River Stort is also navigable from Bishop's Stortford to its junction with the Lee at Hoddesdon, a distance of fourteen miles. The Lee Navigation is governed by the Lee Conservancy Acts, 1870 to 1921 (*o*), and the Stort Navigation by the River Stort Act, 1765 (*p*), and also by certain provisions of the Lee Conservancy Acts above mentioned. Sect. 78 of the Lee Conservancy Act, 1868, provided that from and after the purchase of the Stort by the board the powers and authorities of the board in relation to the Lee or its tributaries should extend to the Stort and its tributaries.

By sect. 69 of the River Lee Act, 1766, the Navigation is to be free to the public subject to the payment of tolls and to the orders and

(i) 37 & 38 Vict. c. xovi.

(k) 10 & 11 Geo. 5, c. viii.

(m) 20 & 21 Geo. 5, c. cxvii.

(o) Sect 11 & 12 Geo. 5, a. lxxviii., s. 1 (2).

(j) 57 & 58 Vict. c. cev.

(l) 11 & 12 Geo. 5, c. lxxviii.

(n) 63 & 64 Vict. c. cxvii.

(p) 6 Geo. 3, c. 78.

bye-laws made by the board. Dredging of the navigable part of the river by any person other than the board is prohibited except with the licence of the board. A fine not exceeding £20 for an infringement of this provision may be imposed on summary conviction, without prejudice to any other remedy or proceeding against the offender (Lee Conservancy Act, 1868, sect. 111).

The board have discretionary powers to cleanse, scour, deepen, divert, enlarge, straighten or otherwise improve the channel or course of the river, and also to alter the level of it or to remove all obstructions and impediments whatsoever to the Navigation, and also to build, alter or remove such bridges, locks and works and to set out towing-paths as they shall think necessary or convenient for the Navigation and to alter and replace the same (*q*), and generally to do and perform such things as they may think necessary for making, extending, improving and maintaining the Navigation (*r*).

Sect. 93 of the River Lee Act, 1766, requires the board to cause to be erected and maintained convenient and substantial bridges, etc., over the ditches and fenees in the towing-paths and proper accommodation bridges.

By sect. 10 of the Metropolis Management (Thames River Prevention of Floods) Amendment Act, 1879 (*s*), the plans of any flood works constructed under that Act through, along, over or under the bed or soil or banks or shores of the River Lee within the board's jurisdiction, which may interfere with the free navigation of the river, must be approved by the board before the works are commenced, nor can any alteration be made without their approval.

For keeping order on the Navigation and for the regulation of traffic the board have their own police appointed under the powers of the Canals (Offences) Act, 1840 (*t*). [65]

By sect. 94 of the River Lee Act, 1766, the steersman or other person having the charge or management of a vessel is made answerable for damage done by such vessel to any of the bridges, locks or works on the Navigation. By sect. 95 of the same Act the steersman or person in charge of a vessel must not obstruct the passage of boats and must not be absent from his vessel unless by reason of inevitable accident. The penalty for an infringement of these provisions is a fine up to 40s. Sect. 98 of the Act is directed at the prevention of waste of water through lock-gates or sluices, and a further provision against waste of water is contained in sect. 39 of the River Lee Water Act, 1855.

All vessels are to be painted or marked in three different places on each side, with graduated figures or marks denoting their burthen in a plain and legible manner, and a fine of £5 for a failure to observe this regulation is imposed by sect. 8 of the River Lee Act, 1778. By

(*q*) 7 Geo. 3, c. 51, s. 1; 13 & 14 Vict. c. cix., s. 14.

(*r*) With regard to the board's discretionary powers, see *Forbes v. Lee Conservancy Board* (1879), 4 Ex. D. 110; 38 Digest 34, 204, where the board were held not liable for damage to a barge caused by a pile in a part of the river, the bed of which was not vested in them and in respect of which they were not entitled to take tolls, although the pile was dangerous, and the board ought to have known the danger and were guilty of negligence. If in such a case the board had taken tolls they would have been bound, at common law, to use reasonable care in making the navigation secure; see *Parnaby v. Lancaster Canal* (1839), 11 A. & E., 228; 38 Digest 17, 90.

(*s*) 20 Halsbury's Statutes 352.

(*t*) 12 Halsbury's Statutes 782.

sect. 21 of the same Act the names and places of abode of owners and steersmen are to be placed on the sterns of vessels and kept plain and legible. The penalty for failure to do this is £5. There is a similar fine for covering or concealing names.

Timber may not be floated on the Navigation under a penalty of 50s. (*ibid.*, sect. 22). [66]

The penalty for assaulting, interrupting or obstructing any collector or person employed by the board in collecting tolls or otherwise in the execution of his office is any sum not exceeding 40s. nor less than 10s., but this provision is not to prevent any collector or other person having his remedy by action, indictment or otherwise (*ibid.*, sect. 23).

The board, their officers and workmen may at all reasonable times enter on any land in or near the Lee or any of its tributaries in order to survey or to examine or inspect any work or thing in order to ascertain whether any of the requirements of the Lee Conservancy Act, 1868, have been complied with, or whether anything has been or is being done in contravention of any provision of the Act (sect. 141). Not less than three days' notice in writing must first be given to the owner or occupier of the land, and compensation for any damage thereby occasioned is to be made. No such entry is to be made on any dwelling-house, garden, etc., for any purpose but that of setting out the line of any work, except with the consent of the occupier, or if there is no occupier or his consent is refused, then with the authority in writing of a justice to be granted on good cause shown (sect. 141).

If any person assaults or resists, or aids or incites any person to assault or resist, any constable, water bailiff or person in the exercise of his duty or the lawful exercise of any authority under the Lee Conservancy Act, 1868, or any bye-law made thereunder, he is liable on summary conviction to a penalty not exceeding £5, without prejudice to any other proceeding or remedy against him (sect. 142).

By sect. 143 of the Lee Conservancy Act, 1868, and sect. 36 of the Lee Conservancy Act, 1900, the Summary Jurisdiction Acts are made applicable to offences under the River Lee Acts and bye-laws. At any part where the boundary of two counties is in the River Lee or any of its tributaries, the justices for each of the counties, both in and out of sessions, are for the purposes of the Lee Conservancy Act, 1868, given jurisdiction over the water, bed and banks, as if the same were entirely within the county of the justices for the time being exercising jurisdiction (sect. 146).

The Canals Protection (London) Act, 1898^(u), applies to the portions of the Navigation which are within the administrative County of London.

For the more easy and effectual execution of the River Stort Act, 1765^(a), and punishment of offences against the same, the Stort Navigation is to be deemed to be within the county of Essex (sect. 37). [67]

Bye-Laws.—The board are empowered to make bye-laws by sect. 99 of the River Lee Act, 1766; by sect. 10 of the River Lee Act, 1805; by sects. 116 to 120 of the Lee Conservancy Act, 1868; and by sect. 35 of the Lee Conservancy Act, 1900. Provisions with regard to the confirmation of bye-laws by Orders in Council are contained in sect. 123 of the Lee Conservancy Act, 1868. Bye-laws so confirmed are to have the same validity and effect as if they were enacted by Parliament

(u) 14 Halsbury's Statutes 264.

(a) 6 Geo. 2, c. 78.

(sect. 126). Another part of this section was repealed by sect. 35 of the Lee Conservancy Act, 1900. The mode of publication of notices or bye-laws is prescribed by sect. 139 of the Act of 1868. Sect. 125 of that Act prescribes a maximum penalty not exceeding £5 for any one offence against bye-laws made under the Act.

The board are also empowered as a "canal company" to make bye-laws under sect. 35 of the Explosives Act, 1875 (*b*), and under sect. 9 of the Petroleum (Consolidation) Act, 1928 (*c*), as to the loading and conveyance on the Navigation of explosives and petroleum spirit. In pursuance of the powers above mentioned general bye-laws for the river have been made and also bye-laws for fisheries and explosives, petroleum spirit and other dangerous goods, and for the special regulation of traffic in Bow Creek.

By sect. 127 of the Lee Conservancy Act, 1868, the board are to cause all bye-laws when they have been allowed, with the Order in Council allowing them, to be printed, and copies are to be sold at a reasonable price to all persons. Copies of the various bye-laws can be obtained from the board on payment of a small fee. By sect. 128 of the same Act a copy of bye-laws purporting to be made by the board and allowed, and to be printed by their direction and to be authenticated by their seal and the signature of their clerk, is conclusive evidence of the existence and contents of such bye-laws and of their due making and allowance, without proof of such seal or signature or any other thing.

Offences against the Lee Conservancy Acts or any bye-laws in force, and penalties, fines, costs and expenses imposed or recoverable under the Acts or any such bye-laws may be prosecuted and recovered summarily, and any fine so recovered is to be paid to the board (Lee Conservancy Act, 1900, sect. 36). [68]

Water Abstraction.—Not long after the construction of the New River by the New River Company the supply for the purposes of that river was found to be insufficient and water was taken by the company from the River Lee. This led to disputes with the Navigation authorities and the abstraction was regulated by the River Lee Act, 1739 (*d*), which also provided for payment to be made by the company to the River Lee trustees. Subsequently water was also taken from the river by the East London Waterworks Co. under statutory powers, and a prescribed payment was made by them to the trustees. By sect. 68 of the Lee Navigation Improvement Act, 1850 (*e*), the trustees were allowed to supply water in bulk to authorities or persons requiring water for domestic, sanitary or other purposes. Sect. 9 of the River Lee Water Act, 1855, provided that subject to the provisions of that Act all the water from time to time flowing into or down the River Lee and the Navigation thereof which the trustees had power to sell under the Lee Navigation Improvement Act, 1850, except certain quantities specified in the Act as reserved to the trustees for the purposes of the Navigation, should be transferred to and absolutely vested in the New River Co. and the East London Waterworks Co. (*f*). The payments to be made by the Water Board are regulated by several enactments, of which the latest are sect. 25 of the Lee Conservancy Act, 1900, and sects. 5 and 6 of the Lee Conservancy Act, 1921, and also by various

(b) 8 Halsbury's Statutes 406.

(c) 13 Halsbury's Statutes 1175.

(d) 12 Geo. 2, c. 32.

(e) 13 & 14 Vict. c. cix.

(f) Now the Metropolitan Water Board by virtue of the Metropolis Water Act, 1902 (20 Halsbury's Statutes 254).

orders made by the Ministers of Health and Transport under the last-mentioned Act.

The River Lee Water Act, 1855, contains numerous provisions for safeguarding the Navigation in addition to the reservation of water under sect. 9 (see above). By sect. 35 the trustees were empowered to grant to any person the right to use for the purposes of steam-engines or manufactories on the banks of the Navigation any part of the water reserved to them by the Act. By sect. 72 the right of owners or occupiers of land above Hertford Lock, through which the water flowing into or down the river passes, to take water is preserved, but such water may only be taken and used by an owner or occupier for any agricultural, domestic or sanitary purpose within his own household or estate. [69]

Fisheries.—Much of the fishing on the navigable parts of the Lee and Stort is free to the public, but there are also a number of private fisheries. Acting under sect. 120 of the Lee Conservancy Act, 1868, the board have made bye-laws applicable (1) to the navigable and other channels of the Lee below a point on that river situate one mile above the Town Mill at Hertford; (2) to the tributaries of the Lee below the Town Mill at Hertford within a distance of two miles of their confluence with the Lee measured in a direct line; and (3) to those parts of the rest of the River Lee and any of its tributaries which the public are entitled to use. These bye-laws relate (i.) to the protection, preservation and regulation of the fisheries and the preservation of fish therein; (ii.) to the registration and regulation of boats on the Lee or any of its tributaries used for fishing by persons following the business of fishermen or kept to be let to hire for fishing; (iii.) to the governing of persons following the business of fishermen and using or working such boats for fishing and of persons keeping such boats for letting on hire for fishing; (iv.) to the prohibition of the use of nets and apparatus improper to be used for taking fish; (v.) to the determination of the times during which the taking of any particular or specified kinds of fish shall not be practised; (vi.) to the governing of persons fishing from the banks of the Lee Navigation, and to the preservation of order among them and the prevention of obstruction by them to horses towing barges and other traffic, and to the protection of the banks and shore from injury by them; and (vii.) to the determination and regulation of the duties of water bailiffs or other officers to be appointed by the board to carry into execution the bye-laws relating to fishing. [70]

Any such bailiff or other officer and any other person specially authorised under the seal of the board under sect. 121 of the Act of 1868, may enter any fishing boat and may seize fish unlawfully taken and any unlawful or prohibited net or apparatus, and may also seize on the banks of the Lee or any of its tributaries any such fish or net or apparatus, but must bring the article seized before a justice to be dealt with in pursuance of bye-laws or otherwise according to law. Protection is given by sect. 122 of the same Act to the rights, exemptions or immunities to which any owner or occupier of any private fishery, or any right to fish, in the Lee or any of its tributaries is entitled.

Sect. 43 (1) of the Salmon and Freshwater Fisheries Act, 1923 (g), provides that an order made under Part IV. of the Act (which deals with fishery districts and fishery boards) relating to the River Lee as

defined by the Lee Conservancy Act, 1868, shall not be made without the board's consent. It is also provided by sect. 43 (2) of the Act of 1923 that the Minister of Agriculture and Fisheries, by an order made on the application of the board but otherwise in accordance with Part IV. of the Act, may apply to the board and the River Lee any provisions of the Act relating to a fishery board or a district of a fishery board. [71.]

Tolls and Charges.—The tolls and charges leviable upon goods conveyed upon the Lee Navigation are regulated by the Canal Tolls and Charges, No. 6 (River Lee, etc.) Order Confirmation Act, 1894 (*h*), confirming a provisional order made by the Board of Trade under the Railway and Canal Traffic Act, 1888 (*i*), and also by sect. 4 of the Lee Conservancy Act, 1921, which fixed maximum tolls and wharfage charges.

With regard to the Stort Navigation, the tolls and charges were formerly regulated by the Canal Tolls and Charges No. 8 (Aberdare, etc., Canals) Order Confirmation Act, 1894 (*h*), but by sect. 4 of the Act of 1921 the special sections applicable only to that Navigation were repealed, and the provisions in the Second Schedule to the Act of 1921 were applied to the Stort. The limitation on tolls leviable on the Stort Navigation in sect. 79 of the Lee Conservancy Act, 1868, was also repealed. Sect. 4 (1) of the Act of 1921 also applied to the Stort Navigation the provisions in the Canal Tolls and Charges, No. 6 (River Lee, etc.) Order Confirmation Act, 1894 (*h*), which before were applicable only to the River Lee. The tolls on pleasure boats are regulated by sect. 107 of the River Lee Act, 1766, by sect. 71 of the Lee Navigation Improvement Act, 1850, and by sects. 20, 21 of the Lee Conservancy Act, 1874.

By sect. 80 of the River Lee Act, 1766, upon the non-payment of the rates and duties by any person upon demand by the collectors appointed by the board, such collectors may seize the goods and the vessels carrying them and also pleasure boats; and if the rates and duties are not paid within four days after seizure, the collectors may sell the goods and vessels, rendering the overplus (if any) to the person making default in payment, after deducting reasonable charges of such seizure and sale.

The tidal portion of the Navigation between Bow Creek and Old Ford Locks is free from tolls. See sect. 45 of the Lee Navigation Improvement Act, 1850. [72.]

Protection against Pollution.—Sect. 89 of the Lee Conservancy Act, 1868, authorises the board, by all lawful and proper means, to preserve and maintain at all times, as far as may be, the purity of the water of the Lee and its tributaries; and also (but subject to the lawful exercise of any rights of taking, impounding or using the water) the flow of the water of the Lee and its tributaries. Sect. 91 of the Act prohibits after the establishment of the conservancy board (*i.e.* the first Friday in April, 1869), a person from doing any of the following things:

- (1) opening into the Lee, or any of its tributaries, any sewer, drain, pipe, or channel with intent or in order thereby to provide for the flow or passage of sewage or other offensive or injurious matter (*l*);

(*h*) 57 & 58 Vict. c. cxxv.

(*k*) 57 & 58 Vict. c. cxxviii.

(*l*) The Inter-Departmental Committee on the Thames and Lee Conservancies, L.G.L. VIII.—3

(*i*) 14 Halsbury's Statutes 220.

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- (2) causing or without lawful excuse suffering any sewage or other offensive or injurious matter to flow or pass into the Lee or any of its tributaries down or through any sewer, drain, pipe or channel not used for that purpose before the establishment of the board;
- (3) opening into any cut, dock, canal, ditch or channel communicating with the Lee or any of its tributaries any sewer, drain, pipe or channel with intent or in order thereby to provide for the flow or passage of sewage or other offensive or injurious matter in such manner that the same will be carried or be likely to be carried by, through or out of that cut, dock, canal, ditch or channel into the Lee or any of its tributaries;
- (4) causing or without lawful excuse suffering any sewage or other offensive or injurious matter to flow or pass into any such cut, dock, canal, ditch or channel down or through any sewer, drain, pipe or channel not used for that purpose before the establishment of the board, in such manner that the same will be carried or be likely to be carried by, through or out of that cut, dock, canal, ditch or channel into the Lee or any of its tributaries. [73]

The penalty for every offence against this section on summary conviction is a fine not exceeding £100, and a further fine not exceeding £50 for every day on which the offence is continued. After conviction the board may stop up the outlet of the sewer, drain, pipe or channel in respect of which the offence is committed and may for that purpose do all works that appear to them requisite, and may enter on any lands. They may recover from the person offending all expenses incurred by them in so doing, with costs.

By sect. 92 of the Act, where sewage or other offensive or injurious matter is caused or suffered to flow or pass into the Lee or any of its tributaries, or into any cut, dock, canal, ditch or channel communicating therewith, then (whether any such sewage or other offensive or injurious matter had been so caused or suffered (*m*) to flow or pass before the establishment of the board or not) the board within a reasonable time after knowledge of the fact must give notice under their seal to the person causing or suffering the same so to flow or pass, requiring him to discontinue it within a time specified in the notice not being less than one year or more than three years. This period was altered by sect. 28 of the Lee Conservancy Act, 1900, to three months. The board are empowered to extend the time specified in the notice (*n*).

Notices are to affect successive owners or occupiers. (Lee Conservancy Act, 1900, sect. 29 (*o*)). [74]

By sect. 93 of the Lee Conservancy Act, 1868, proceedings may be taken for non-compliance with a notice, and the person failing to discontinue the pollution is liable on summary conviction, or on conviction

appointed by the Minister of Health and the Minister of Transport, in para. 147 of their report dated February 20, 1923, state: "We incline to the opinion that an amendment of s. 91 of the Lee Conservancy Act, 1868, is required so as to admit of the opening of an outfall for a purified sewage effluent, subject to adequate safeguards."¹⁵ No action has yet been taken with this object.

(*m*) As to causing or suffering, see *Lee Conservancy Board v. Tottenham Local Board* (1891), 64 L. T. 198.

(*n*) See under s. 94, *infra*.

(*o*) See *Lee Conservancy Board v. Hertford Corpn.* (1884), 48 J. P. 628.

on indictment, to a penalty not exceeding £100 and to a further penalty not exceeding £50 for every day on which the offence is continued. After a conviction, the board have power to execute works and recover costs, similar to those given by sect. 91 of the Act of 1868 (p).

Under sect. 94 of the Act of 1868 a person aggrieved by a notice on the ground that insufficient time is allowed him to discontinue the pollution may, not later than one month before the expiration of the time allowed, demand in writing an extension of the time. If the board refuse to comply with the demand, the question of extension of time is to be determined in the case of a corporation, board, body or authority by the M. of H. (g), whose decision is final, and in any other case by a reference to arbitration. Penalties recovered against public authorities, together with expenses and costs, are payable out of the rates which they are authorised to levy (r).

Sect. 96 of the Lee Conservancy Act, 1868, contains provisions against the placing of manure heaps or other collections of offensive or injurious matter on the banks so that any offensive or injurious matter will drain or run therefrom into the Lee or any of its tributaries. A penalty not exceeding £10 is recoverable on summary conviction, and a further penalty not exceeding £5 for every day on which the offence is continued.

The service or publication of notices by the board in connection with the "protection of water" is regulated by sect. 97 of the Lee Conservancy Act, 1868. By sect. 98 of the Act of 1868 the New River Co. or the East London Waterworks Co. (now the Metropolitan Water Board) are authorised to require action by the conservancy board to abate pollutions. If the board fail to take action after notice, the Water Board may appeal to the M. of H. (g).

The right to prosecute for offences under this head is reserved to the conservators (Act of 1868, sect. 99). [75]

Sect. 27 of the Lee Conservancy Act, 1900, contains stringent provisions for the prevention of pollution from rubbish, refuse from factories, etc., and these provisions were strengthened by sect. 60 of the River Lee (Flood Relief, etc.) Act, 1930. The penalty for an offence is a fine not exceeding £20, with a daily penalty of not exceeding £10. Any officer of the board may, on producing a signed authority, enter and board any vessel to examine it and ascertain whether any offence has been or is being committed. Where any offence against sect. 60 is committed from or out of a vessel, either the master or the owner of the vessel are liable to be proceeded against, but both cannot be punished for the same offence. Any constable, and any person called by a constable to his assistance, may take into custody, without warrant, any person found committing any offence against sub-sects. (1) to (8) of the section.

For the purpose of giving effect to the provisions of the Lee Con-

(p) See *ante*, p. 34.

(q) The Minister takes the place of the Secretary of State; see s. 37 (1) of the Lee Conservancy Act, 1900.

(r) As to the liability of a sanitary authority for pollution from their sewers, see the cases mentioned on p. 709 of Lumley's Public Health, 10th ed. In *Lee Conservancy Board v. Leyton U.D.C.* (1906), 70 J. P. 318; 44 Digest 44, 311; it was held that the accidental discharge of polluting matter or liquid from a sewer vested in a local sanitary authority may not constitute an offence. As to the dismissal of an information on the ground that the alleged offence, although proved, was of a trivial nature, see *Lee Conservancy Board v. Bishop's Stortford U.D.C.* (1906), 70 J. P. 244; 44 Digest 56, 397.

servancy Act, 1900, relating to pollution, any member or officer of the board, on producing, if so required, a certificate of his authority, may enter upon any land or premises for the purpose of examining and laying open the same. If admission is refused, a court of summary jurisdiction on complaint may by order require the person to admit the member or officer. The penalty for refusing to obey such an order is a fine not exceeding £5 (sect. 30). An officer of the board, or person authorised by them, may enter on any land, manufactory or other work or building for the purpose of taking and carrying away samples of any effluent, at the point where it passes into the River Lee or any of its tributaries. The penalty for obstructing or molesting any such officer or person is a fine not exceeding £5. The samples are to be taken in triplicate and one of the triplicates must be left with the occupier of the premises (sect. 31). [76]

By sect. 32 of the Lee Conservancy Act, 1900, the board may, by notice in writing, require the owner of an unseaworthy or leaky barge, used for the carriage of manure or offensive matter, to repair it or discontinue its use.

As to the recovery of penalties for offences against the Lee Conservancy Acts before a court of summary jurisdiction, see *ante*, p. 31.

The board's powers for the prevention of the pollution of streams in Middlesex were taken away by sect. 40 of the Lee Conservancy Act, 1900, leaving the Middlesex county council to take action under their statutory powers, where necessary, but this section was repealed by sect. 61 of the Middlesex County Council Act, 1930 (s), and the board's jurisdiction restored.

By sect. 9 of the Rivers Pollution Prevention Act, 1876 (l), it was provided that the board should within the area of their jurisdiction have, to the exclusion of any other authority, the powers for enforcing the provisions of that Act which sanitary authorities have under it. By the same section the board were also empowered to enforce the provisions of the Lee Conservancy Act, 1868, under the head or division "protection of water," by application to the county court having jurisdiction in the place in which any offence is committed against those provisions, and the court may by summary order require any person to abstain from the commission of any such offence, and the provisions of the Act of 1876 with respect to summary orders of county courts and appeals therefrom are to apply accordingly. This section therefore gives the board the alternative right of proceeding in the county court where they consider that this procedure is preferable to procedure under the Lee Conservancy Act, 1868. It is probable that by virtue of sect. 14 of the L.G.A., 1888 (u), county councils have concurrent powers to enforce the provisions of the Rivers Pollution Prevention Acts as respects the River Lee, but not of course the provisions of the Lee Conservancy Act, 1868.

The jurisdiction of the board for the protection of water extends over the whole of the Lee watershed, the area of which is upwards of 600 square miles. The river and its tributaries are defined in sect. 3 of the Act of 1868. [77]

Sunken or Stranded Vessels.—By sect. 96 of the River Lee Act, 1766, it is provided that if the owner or person having the care of a vessel which has sunk in the river does not without loss of time raise

(s) 20 & 21 Geo. 5, c. cxcvi.

(u) 10 Halsbury's Statutes 697.

(l) 20 Halsbury's Statutes 320.

it or remove it out of the way of other vessels passing along the Navigation, it shall be lawful for the board to cause it to be raised and to detain and keep it until payment is made of all expenses occasioned thereby. If payment is not made in four days, the board are to sell the vessel to reimburse their expenses or charges, returning the overplus (if any) to the owner or person having the care of the vessel.

Under sect. 35 of the Lee Conservancy Act, 1900, the board may make bye-laws for requiring the removal of any sunken or stranded barge by its owner. The bye-law made under this section is No. 27 of the River Lee General Bye-laws, which provides that in case of any vessel sinking or getting aground in such a manner or position as to obstruct the traffic on the Navigation, the master shall forthwith inform the nearest officer of the board and shall use every possible means to lighten and raise the vessel and to remove her out of the way of other vessels. The position of any sunken or stranded vessel must be adequately marked by the master so as to prevent injury or danger to traffic.

Further provisions contained in sect. 58 of the River Lee (Flood Relief, etc.) Act, 1930, allow the board to cause a sunken or stranded vessel to be removed, or blown up, or otherwise destroyed, if it is not reasonably practicable to remove it, and to recover from the owner of the vessel at the time of the sinking or stranding all expenses incurred in or in connection therewith or in removing cargo, etc. The board may detain the vessel or cargo to secure reimbursement and may sell the same. If there is any surplus it must be returned to the owner, and if there is a deficiency the board may take proceedings for its recovery either summarily as a civil debt or as a debt in any court of competent jurisdiction. Except in case of emergency, the board are to give twenty-four hours' notice in writing to the owner before exercising these powers, and the owner, on giving notice before the expiration of the twenty-four hours, may forthwith himself remove, blow up or destroy such vessel. If any vessel is left in the river for a period of seven days, the board after giving three days' notice to the owner may remove the vessel and charge him with the cost of removal, and a sum not exceeding 5s. per day in respect of the period during which any part of the river is occupied by the vessel after the notice has been given. The cost and sum may be recovered as above mentioned. If the sum payable to the board is not paid within one month after it has become due, the board may break up, sell or otherwise dispose of the vessel. [78]

Borrowing Powers.—The provisions of the Lee Conservancy Acts which relate to borrowing by the board and the issue of debenture stocks are as follows: (1) River Lee Acts, 1766, sects. 84, 85; 1778, sects. 11 to 14, 16; (2) Lee Navigation Improvement Act, 1850, sects. 64 to 66; (3) Lee Conservancy Acts, 1868, sects. 82—88; 1874, sects. 23 to 25; 1900, sects. 20 to 23; 1921, sects. 14 to 24; (4) River Lee (Flood Relief, etc.) Act, 1930, sects. 53 to 55.

Borrowing to the extent of £440,000 is authorised and the powers have been exercised to the extent of £388,000.

A trustee, executor or other person empowered to invest money on the mortgages of the board may, unless forbidden by the will or other instrument under which he acts, invest the same in debenture stock of the board (Lee Conservancy Act, 1874, sect. 25). [79]

Flood Prevention.—By sect. 89 of the Lee Conservancy Act, 1868, the board were authorised to preserve and maintain the flow of the water of the Lee and its tributaries; and by sect. 1 of the River Lee Act, 1766, they were empowered to construct floodgates, weirs, etc. The board had, however, no general power to deal with floods. By the River Lee Watershed (Flood Prevention) Act, 1920, the board were empowered to prepare a scheme or schemes providing for the effectual regulation and mitigation of the flooding of land within the watershed of the River Lee and its tributaries, and for carrying off the floodwaters from such land, and also to make or cause to be made such inquiries, investigations and surveys and to prepare or cause to be prepared such plans and estimates as might be necessary for such purpose (*a*).

Under powers conferred by the River Lee (Flood Relief, etc.) Act, 1930, the board, in conjunction with the West Ham corporation, have carried out extensive works for the relief of flooding in connection with the lower portion of the River Lee. The channels which have been constructed are tidal and navigable and are subject to the provisions of the Lee Conservancy Acts.

By sect. 80 of the Land Drainage Act, 1930 (*b*), the Lee Conservancy Catchment Board was established, consisting of the persons who are for the time being members of the Lee Conservancy Board, together with six additional members appointed as prescribed by the Act. [80]

(*a*) See also *ante*, p. 29, as to the plans of works for preventing floods from the Thames.

(*b*) 23 Halsbury's Statutes 581.

LEGAL PROCEEDINGS

See ACTIONS BY AND AGAINST LOCAL AUTHORITIES.

LESSEE, LOCAL AUTHORITY AS

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See also titles : COMPULSORY PURCHASE OF LAND ;
CORPORATE LAND ;
DISPOSAL AND UTILISATION OF LAND ;
RESTRICTIVE COVENANTS.

By Agreement.—A general power of taking a lease of land by agreement is given to local authorities by sect. 157 (1) of the L.G.A., 1933 (a) ; local authorities for this purpose are county councils, borough councils and district councils. A similar power is given to parish councils by sect. 167 of the Act (b). But in both instances the power is limited to the acquisition of land for the purpose of a function of the local authority (c) under the L.G.A., 1933, or some other public general Act. Where functions are exercised under a local Act, a direct or applied power to acquire land by lease must be sought for in the local Act.

A local authority (other than a parish council) can by agreement take land on lease in advance of their requirements subject to the consent of the appropriate Minister (d).

No general power of taking land on lease is given to a parish meeting of a parish without a parish council, but this power may be wanted if a function of a parish council is conferred on a parish meeting by order of a county council under sect. 273 of the Act of 1933 (e). A lease to a parish meeting would be executed by the representative body of the parish (*ibid.*, sect. 47 (2)) (f).

As regards an acquisition of corporate land, sect. 171 of the Act of 1933 (g), which allows a borough council to acquire by agreement land as corporate land, with the approval of the M. of H., where the municipal corporation have no such power under their charter, or where the power conferred by the charter is exhausted, does not expressly refer to an acquisition of land on lease, like the enactments already mentioned, but no doubt covers an acquisition by lease as well as by purchase. Further, as to corporate land, see that title in Vol. IV. [81]

By sect. 179 of the L.G.A., 1933 (h), nothing in Part VII. of that Act (*inter alia*) (1) empowers a local authority to acquire by lease an ancient monument within the meaning of the Ancient Monuments Acts,

(a) 26 Halsbury's Statutes 391.

(b) *Ibid.*, 398.

(c) Including a function of a county council exercised through the standing joint committee of the county ; L.G.A., 1933, s. 157 (2) ; 26 Halsbury's Statutes 392.

(d) I.e. the Minister, board, etc., concerned with the purpose for which the land is intended to be acquired ; L.G.A., 1933, s. 158 (3) ; 26 Halsbury's Statutes 392.

(e) 26 Halsbury's Statutes 451.

(g) *Ibid.*, 400.

(f) *Ibid.*, 328.

(h) *Ibid.*, 403.

1913 and 1930 (i); or (2) authorises the disposal of land by a local authority in breach of any trust, covenant or agreement binding on the authority (k); or (3) confers a power of compulsory acquisition where the statute or statutory order conferring the power to acquire land expressly limits that power to acquisition by agreement; or (4) affects any provisions relating to the acquisition of land by a local authority contained in any of the enactments set out in the Seventh Schedule to the Act (l), some of which contain provisions as to taking land by lease; or (5) affects the provisions of the Unemployment (Relief Works) Act, 1920, or the Public Works (Facilities) Act, 1930.

Where a statute authorises the acquisition by a county, borough, district or parish council of land on lease, and is not one of those mentioned in sect. 179 or the Seventh Schedule to the Act of 1933, apparently it is intended that land for the authorised purpose should be acquired by the council under the statute, supplemented if need be by the Act of 1933. Examples of statutes which are not so mentioned are sect. 9 of the Open Spaces Act, 1906 (m), and sect. 21 of the Poor Law Act, 1930 (n), as to the hiring of land or buildings for workhouses. These provisions are not repealed by the Act of 1933. Where, however, it is desired to acquire land for any purpose of the P.H.As., it is intended that the acquisition should be wholly under the Act of 1933, in view of the repeals in sects. 175 to 178 of the P.H.A., 1875 (o), made by the L.G.A., 1933. [82]

Compulsory Acquisition.—The power of a local authority to hire land compulsorily is conferred only by a few enactments, of which sect. 4 of the Small Holdings and Allotments Act, 1920 (p), authorising a county council or county borough council (q) to take on lease compulsorily land for the provision of small holdings, and sect. 39 (2) of the Small Holdings and Allotments Act, 1908 (r), are examples. In both instances, the acquisition is authorised by an order of the council confirmed by the Minister of Agriculture and Fisheries, except that where a parish council desire to take the land, the order is made by the county council (sect. 39 (7)), or by the Minister if the county council refuse to make an order (*ibid*). Land for cottage holdings (s) may also be hired compulsorily under sect. 12 of the Agricultural Land (Utilisation) Act, 1931 (t). [83]

(i) The section should have referred to the Ancient Monuments Act, 1931.

(k) This restricts the alienation of leasehold interests in breach of the head lease.

(l) 26 Halsbury's Statutes 509. The Seventh Schedule contains the Electricity (Supply) Acts, 1882 to 1933, the Lunacy and Mental Treatment Acts, 1890 to 1930, the Technical and Industrial Institutions Act, 1892, the Military Lands Acts, 1892 to 1903, the Public Libraries Acts, 1892 to 1919, the Light Railways Acts, 1890 and 1912, the Allotments Acts, 1908 to 1931, the Small Holdings and Allotments Acts, 1908 to 1931, the Development and Road Improvement Funds Act, 1909, the Air Navigation Act, 1920, the Education Acts, 1921 to 1933, the Housing Acts, 1925 and 1930, the Town and Country Planning Act, 1932, and any local Act.

(m) 12 Halsbury's Statutes 887.

(n) *Ibid.*, 981.

(o) 18 Halsbury's Statutes 699—702.

(p) 1 Halsbury's Statutes 324.

(q) See definition of "county council" in s. 61 of the Act of 1908; 1 Halsbury's Statutes 278.

(r) 1 Halsbury's Statutes 266.

(s) See definition in s. 20 of the Act of 1931; 24 Halsbury's Statutes 63.

(t) 24 Halsbury's Statutes 58.

LESSOR, LOCAL AUTHORITY AS

See CORPORATE LAND ; DISPOSAL AND UTILISATION OF LAND.

LEVEL CROSSINGS

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Railways.—The statutory provisions relating to railways crossing highways on the level are mainly contained in: (i.) The Highway (Railway Crossings) Act, 1839 (*a*); (ii.) The Railway Regulation Act, 1842 (*b*), both of which are of general application; (iii.) The Railways Clauses Consolidation Act, 1845 (*c*), which applies to all railways authorised by special Act unless the clauses, or any of them, are varied or excepted by the special Act (*d*); (iv.) The Railways Clauses Act, 1863 (*e*), which has no application unless specifically incorporated in a special Act; and (v.) special Acts authorising the construction of railways.

The general Acts are frequently excluded or varied by the special Acts, and it is necessary to refer to the latter in every instance when the position with regard to a level crossing is to be investigated. The practice with regard to the promotion of special Acts authorising the construction of railway level crossings is controlled by the Parliamentary Standing Orders which provide that where a railway is intended to cross any public carriage road on the level the crossing is to be described on the deposited sections, and it is to be stated if such level will be unaltered (*f*). It is further provided that no such level crossing shall be made unless the Committee on the Bill consider a report from the Ministry of Transport and, if it is favourable to the crossing being made, approve it; or, if it is unfavourable, they nevertheless are of opinion that it should be authorised, and report accordingly with their reasons (*g*).

The statutory provisions as to level crossings apply only to railways authorised by Act (*h*). They do not apply to private railways or wagonways, nor to light railways unless incorporated in the order authorising the undertaking (*i*). [84]

(*a*) 14 Halsbury's Statutes 12.

(*b*) *Ibid.*, 17.

(*c*) *Ibid.*, 30.

(*d*) A form in which portions of the Clauses Act may be incorporated in other Acts is enacted in s. 5; 14 Halsbury's Statutes 33.

(*e*) 14 Halsbury's Statutes 117. In this title each of the Acts already mentioned will be referred to as the Act of the year in which it was passed.

(*f*) See House of Lords Standing Orders 57 and 61; House of Commons Standing Orders 58 and 62.

(*g*) House of Lords Standing Orders 138; House of Commons Standing Orders 162.

(*h*) Act of 1845, s. 1; 14 Halsbury's Statutes 30; Act of 1863, s. 3; *ibid.*, 118; *Mason v. Baird* (1878), 3 App. Cas. 1082; 38 Digest 310, 335.

(*i*) Light Railways Act, 1896, s. 12, Sched. II.; 14 Halsbury's Statutes 257, 263.

The model clauses for Railway Bills issued by the House of Lords contain a common form clause relating to level crossings which provides that each level crossing shall be specifically described, and authorises the construction of level crossings subject to the relevant provisions in the Acts of 1845 and 1863 (Part I.).

Sect. 1 of the Act of 1839 (*k*) requires that where a railway crosses a highway for carts or carriages (*l*), gates shall be made and maintained by the undertakers across each end of the highway, and that they shall employ proper persons to open and shut the gates.

This Act and other Acts relating to railways now repealed, established the practice of keeping the gates closed against the railway except while trains were passing over the crossing. It was soon found, however, that it was more conducive to safety to keep the gates closed against the highway instead of the railway, and sect. 9 of the Act of 1842 (*m*), accordingly required that gates should be kept closed across each end of the highway. But the Minister of Transport may otherwise order under the proviso to sect. 9, or under sect. 42 of the Road and Rail Traffic Act, 1933 (*nn*). [85]

The Minister of Transport may authorise the substitution of bridges or arches for level crossings, if he is satisfied that the crossings endanger public safety and that the building of the bridge or arch does not involve violation of existing rights (*n*), and, where sects. 7, 8 of the Act of 1863 (*o*) apply, the Minister may, for public safety, require the company at their own expense to carry a public carriage road over or under the railway instead of on the level, and may authorise the company to acquire land for the purpose subject to the provisions of the Lands Clauses Consolidation Act, 1845. If a company cannot comply with such a requirement through want of funds *mandamus* will not lie (*p*).

Sect. 46 of the Act of 1845 (*q*) provides that if a railway crosses a public highway, then, except where otherwise provided by the special Act, the road shall be carried over the railway or the railway over the road by means of a bridge, provided that it shall be lawful for the company to carry the railway across a highway other than a public carriage road on the level, with the consent of two or more justices in petty sessions. It has been held under this section that the company may carry their railway either over or under a highway at their own discretion (*r*), and where the special Act gives specific authority for a crossing on the level, the company may nevertheless carry their line over or under the road (*s*). The provision with regard

(*k*) 14 Halsbury's Statutes 12.

(*l*) The expression used is "any turnpike road or any highway or statute labour road for carts or carriages." Turnpike roads, with few exceptions, became main roads by virtue of s. 13 of the Highways and Locomotives (Amendment) Act, 1878; *o* Halsbury's Statutes 172; and by s. 29 of the L.G.A., 1929; 10 Halsbury's Statutes 903, main roads became county roads.

(*m*) 14 Halsbury's Statutes 18.

(*nn*) 26 Halsbury's Statutes 907.

(*n*) Act of 1842, s. 13; 14 Halsbury's Statutes 20.

(*o*) 14 Halsbury's Statutes 119, 120.

(*p*) *Re Bristol and North Somerset Rail. Co.* (1877), 3 Q. B. D. 10; 38 Digest 308, 326.

(*q*) 14 Halsbury's Statutes 47.

(*r*) *R. v. South Eastern Rail. Co.* (1853), 4 H. L. Cas. 471, Ex. Ch.; 38 Digest 266, 35.

(*s*) *Brynton v. London and North Western Rail. Co.* (1846), 10 Beav. 238; 38 Digest 266, 37; *Dover Harbour Warden v. London, Chatham and Dover Rail. Co.* (1861), 30 L. J. Ch. 474; 38 Digest 266, 38.

to bridges does not apply to a public footpath (*l*) nor to a private street (*u*).

If the company apply to the justices under sect. 46 they must, fourteen days before the application, give notice of their intention in a newspaper circulating in the county, and must affix a copy of the notice on the door of the parish church of the parish, or, if there be no such church, in some other place where notices are usually affixed (*a*). The justices may only consent to the application if it appears to them that the railway can be carried across the highway on the level consistently with a due regard to the public safety and convenience (*a*). An appeal lies to quarter sessions, who may either confirm or quash the determination, or make such other order in regard to the method of carrying the railway across the highway as shall seem fit to them, and may make orders concerning the costs of the original application and the appeal (*b*). [86]

The Act of 1845 contains provisions relating to level crossings which in effect repeat the provisions of the Act of 1839 and sect. 9 of the Act of 1842 (*c*).

A lodge must be maintained by the railway company at every level crossing over a turnpike road (*d*) or public carriage road, and the Minister of Transport may make regulations as to the level crossing, and as to the speed of trains passing over it (*e*). If the company fail to provide or maintain such lodge, or fail to keep a proper person to watch or superintend the crossing, or fail to comply with any regulation so made, they are liable to a penalty of £20 and a daily penalty of £10 for a continuing offence (*e*). [87]

Gates provided under the statutes by a company must completely fence off the railway from the road (*f*). If a gate is left open it may be taken as an intimation by the company that the line is safe to cross (*g*). Gates provided by the company where public footpaths cross the line must in like manner effectually fence the path from the line (*h*).

Where a member of the public opens a gate closing a public carriage road against a railway, the company are in general not responsible for the consequences (*i*), and the crossing can only be regarded as a

(*l*) *Dartford R.D.C. v. Besley Heath Rail. Co.*, [1898] A. C. 210; 38 Digest 206, 83.

(*u*) See *Caledonian Rail. Co. v. Glasgow Corpn.*, [1909] A. C. 138; 38 Digest 272, 128.

(*a*) Act of 1845, s. 59; 14 Halsbury's Statutes 53.

(*b*) *Ibid.*, s. 60.

(*c*) *Ibid.*, s. 47; 14 Halsbury's Statutes 48.

(*d*) See note (*l*), *ante*, p. 42.

(*e*) Act of 1863, s. 6; 14 Halsbury's Statutes 119.

(*f*) *Pancett v. Yorkshire and North Midland Rail. Co.* (1851), 16 Q. B. 610; 38 Digest 310, 331; *Charman v. South Eastern Rail. Co.* (1888), 21 Q. B. D. 524, C. A.; 38 Digest 310, 333.

(*g*) *Stapley v. London, Brighton and South Coast Rail. Co.* (1865), L. R. 1 Exch. 21; 38 Digest 312, 342; *North Eastern Rail. Directors v. Wanless* (1874), L. R. 7 H. L. 12; 38 Digest 312, 344.

(*h*) *Parkinson v. Garstang and Knott End Rail. Co.*, [1910] 1 K. B. 615; 38 Digest 310, 334. For other cases as to footpath level crossings, see *Williams v. Great Western Rail. Co.* (1874), L. R. 9 Exch. 157; 38 Digest 311, 336; *Mercer v. South Eastern and Chatham Rail. Co.'s Managing Committee*, [1922] 2 K. B. 549; 38 Digest 311, 338; *Skellon v. London and North Western Rail. Co.* (1867), L. R. 2 C. P. 631; 38 Digest 311, 337 (contributory negligence); *Bilbee v. London, Brighton and South Coast Rail. Co.* (1865), 18 C. B. (N. S.) 584; 38 Digest 313, 346.

(*i*) *Wyatt v. Great Western Rail. Co.* (1865), 84 L. J. (Q. B.) 204; 38 Digest 311, 340.

highway if the gates are opened by a servant of the company (*k*).
[88]

Where a railway crossed a turnpike road (*l*) on a level crossing adjoining a station, sect. 48 of the Act of 1845 (*m*) prohibited any train from crossing the road at a greater speed than four miles an hour, but this provision and any like provision in a local or personal Act was repealed by sect. 42 (3) of the Road and Rail Traffic Act, 1933 (*n*). The Minister of Transport may make rules and regulations with regard to such crossings (*m*).

A railway company may not shunt trains over a level crossing authorised by a special Act on a public carriage road, nor allow trains, engines, carriages or trucks to stand across the same (*o*).
[89]

If in making a level crossing it is necessary to make inclined approaches in a road (*p*), the company are not liable, under the Act of 1845, for future repairs of the road where the level has been altered, if they have satisfied the requirements of sect. 56 of that Act (*q*), though at common law they are under such a liability (*r*). They are also liable to keep the crossing itself in a proper state for the passage of road traffic (*s*).

Where a highway other than a public carriageway (*t*) is crossed on the level, a railway company must make and maintain convenient ascents and descents and other approaches, with handrails or other fences, together with gates for bridleways and gates or stiles for footways, on each side of the railway (*u*). If these provisions are not observed by the company, then, on the application of the surveyor of roads or of two householders of the parish or district, two justices may, after ten days' notice to the company, order them to carry out their obligations within a time limited by the order. If such order is not complied with, the company forfeit £5 for every day that they fail so to comply, and the justices may order the penalty, or any part of it, to be applied in such manner and by such person as they think fit, in executing the work in respect of which the penalty is incurred (*a*). [90]

Tramways.—Where a carriageway in which a tramway is laid is crossed by a railway or tramway on the level, the works must be

(*k*) *R. v. Strange* (1889), 16 Cox, C. C. 552; 38 Digest 812, 341. A railway company can dedicate a level crossing as a highway. *South Eastern Rail. Co. v. Warr* (1928), 21 L. G. R. 469, C. A.; 88 Digest 344, 332.

(*l*) See note (*l*) *ante*, p. 42.

(*m*) 14 Halsbury's Statutes 48. This provision is not usually incorporated in modern railway Acts.

(*n*) 20 Halsbury's Statutes 908.

(*o*) Act of 1933, s. 5; 14 Halsbury's Statutes 119. The meaning of the words "authorised by the special Act" is discussed in *R. v. Longe and Cooke* (1897), 66 L. J. (Q. B.) 278; 88 Digest 300, 330.

(*p*) As to power to make inclined planes, see Act of 1845, s. 16; 14 Halsbury's Statutes 37. As to power to deviate from datum line, see ss. 11, 12; 14 Halsbury's Statutes 35.

(*q*) 14 Halsbury's Statutes 51. *West Lancashire R.D.C. v. Lancashire and Yorkshire Rail. Co.*, [1903] 2 K. B. 394; 88 Digest 280, 173.

(*r*) *Hertfordshire County Council v. Great Eastern Rail. Co.*, [1909] 2 K. B. 403, C. A.; 88 Digest 308, 325.

(*s*) *Osier v. North Eastern Rail. Co.* (1874), L. R. 9 Q. B. 409; 88 Digest 308, 324; and see *A.-G. v. Conduit Colliery Co.*, [1895] 1 Q. B. 301; 19 Digest 174, 1233; and *Bell v. Caledonian Rail. Co.* (1902), 4 F. 431; 88 Digest 316, c.

(*t*) *R. v. Schafeld* (1893), 60 L. T. 313; 88 Digest 311, 339.

(*u*) Act of 1845, s. 61; 14 Halsbury's Statutes 53.

(*a*) *Ibid.*, s. 62.

constructed and maintained under the superintendence (at the cost of the promoters of the tramway undertaking), and to the reasonable satisfaction of the persons owning the railway or tramway, unless, after seven days' notice given by the promoters, such superintendence is refused or withheld (b). [91]

(b) Tramways Act, 1870, s. 26; 20 Halsbury's Statutes 15.

LIBEL AND SLANDER

See DEFAMATION.

LIBERTIES

See HUNDREDS.

LIBRARIAN

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See also titles: APPOINTMENT AND DISMISSAL OF OFFICERS;
LIBRARIAN;
OFFICERS OF LOCAL AUTHORITIES.

Appointment.—Where the library authority are the council of a county, borough or urban district, they have power to appoint such officers and servants as may be necessary for the efficient discharge of their functions under the general provisions in sects. 105—107 of L.G.A., 1933 (a), "officer" being defined in sect. 305 as including a servant. Where the library authority are a parish council or library commissioners, they have power to appoint salaried officers and

(a) 26 Halsbury's Statutes 361, 362.

servants under sect. 15 (2) of the Public Libraries Act, 1892 (*b*). The library committee are usually entrusted with the selection of a suitable candidate as librarian, their choice being recommended to the council for confirmation. The power of appointment is sometimes delegated by the council to a special committee entrusted with the duty of dealing with all questions affecting officers and staff. The librarian receives such reasonable remuneration as the council determine.

A local authority, other than a parish council, may require an officer to give security for the faithful execution of his office and for his duly accounting for all money or property which may be entrusted to him (*c*). [92]

Qualification.—To ensure the provision of an efficient library service the librarian appointed should be qualified by experience and professional training (*d*). Scholarship without technical training is not sufficient, and it is, therefore, important that serious consideration should be given to the practical qualifications of applicants for the post of librarian and for the senior positions in libraries. The Library Association conducts a series of examinations in professional subjects and grants the Associateship (A.L.A.) and Fellowship (F.L.A.) to approved candidates on passing the examinations. The University of London School of Librarianship also trains and examines candidates and grants a diploma in librarianship. It is customary to stipulate in advertisements inviting applications for the office of librarian that candidates should hold the Fellowship of the Library Association. [93]

Dismissal or Removal from Office.—The librarian, like most officers of local authorities, holds office during the pleasure of the council and may be dismissed at any time without notice, unless there has been included in the terms of appointment a provision that the appointment may not be terminated by either party without giving to the other reasonable notice (*e*). Generally the power of dismissal of an officer is reserved to the council. For further particulars, see pp. 343, 344 of Vol. I. [94]

Powers and Duties.—In general the librarian is responsible for carrying into effect the policy of the library committee and is answerable to them for the proper administration of the library service. It is desirable that he should act as clerk of the committee and that he should attend their meetings to advise as the technical expert (*f*). He should also be invited to attend meetings of the council at which library matters are to be discussed. The duties of a librarian are multifarious and it is impossible to enumerate them. In a large system, only a general supervision can be exercised, and trained and expert assistants must be relied upon to take charge of the various departments of activities. He should control the duties of the staff and decide matters

(*b*) 13 Halsbury's Statutes 856. The repeals in s. 15 (1) made by the L.G.A., 1933, do not extend to parish councils and library commissioners.

(*c*) L.G.A., 1933, s. 119; 26 Halsbury's Statutes 369.

(*d*) "The main requirements for a librarian are a liberal education and technical training. For the welfare of the service it is necessary to recognise that librarianship is a learned profession so that the librarian should have a sufficient knowledge of, and sympathy with, all branches of learning." (Report of the Public Libraries Committee, Cmd. 2867, 1927).

(*e*) See L.G.A., 1933, s. 121; 26 Halsbury's Statutes 370.

(*f*) Report of the Public Libraries Committee, paras. 124 and 125.

of technique. The preparation of book-lists and matters for consideration by the committee should receive his personal attention, as well as the records of the minutes of the committee. He should also prepare the annual report and the readers' bulletins or guides. In addition he should be prepared, when necessary, to give his personal assistance to serious readers and students. There should be frequent discussions between librarian and chairman of committee at which many matters of detail will be settled. [95]

County Librarian.—As in municipal libraries only a person qualified by education and experience should be appointed to the post of county librarian. His duties differ from those of the public librarian, the formation and conduct of a county library service being a distinctive branch of librarianship. He is responsible for the organisation of local branches and distributing centres; the preparation of book-lists for the committee's consideration; the distribution and collection of books from the branches and centres; the working of systems for buying, accessioning, classifying and distributing the stock; and the preparation of catalogues and lists.

It is necessary for the county librarian both to make himself acquainted with the requirements of the area which he serves, and to keep in touch with the numerous bodies to which he looks for advice or which require assistance from him. For this purpose it is necessary that he should not be tied to an office, but should be free to move about without fear that the routine work of the county library will suffer by his absence from headquarters (*g*). The staff, therefore, should be sufficient in number, the minimum, in addition to the librarian, being four other qualified persons, viz. a deputy librarian, a cataloguer and assistants for reference work and circulation (book selection) work.

The status of the county librarian in relation to the education committee should be similar to that which the school medical officer occupies in relation to that body. He should attend meetings of the library sub-committee and of the education committee when library matters are under discussion (*g*). [96]

London.—The L.G.A., 1933, does not in general extend to London so that the provisions of sect. 15 (2) of the Public Libraries Act, 1892 (*h*), namely, that the library authority may appoint salaried officers and servants and dismiss them, are still operative in the metropolis. [97]

(*g*) Public Libraries Committee report, paras. 124 and 125.

(*h*) 13 Halsbury's Statutes 856.

LIBRARIES

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See also titles :

ADOPTIVE ACTS ;
ART GALLERIES ;
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PUBLIC LIBRARIES ACTS AND LIBRARY AUTHORITIES

The Acts relating to public libraries in England and Wales are the Public Libraries Act, 1892 (*a*), the Public Libraries (Amendment) Act, 1893 (*b*), the Public Libraries Act, 1901 (*c*), and the Public Libraries Act, 1919 (*d*), and these Acts may collectively be cited as the Public Libraries Acts, 1892 to 1919 (*e*). Enactments affecting public libraries will also be found in sect. 59 of the P.H.A. Amendment Act, 1907 (*f*), and the Libraries Offences Act, 1898 (*g*). The Public Libraries Acts are adoptive Acts (*h*) and apply only to those areas for which they have been adopted, but by the Act of 1919 the power of adoption was considerably curtailed, see *post*, p. 49. The Acts allow library authorities to provide and maintain public libraries, museums and art galleries at the expense of the rates. In a few boroughs similar powers have been secured by means of a local Act, and occasionally the Public Libraries Acts have been modified or extended by a local Act. [98]

Adoption of Acts.—The council of a county may, by resolution specifying the area to which the resolution extends, adopt the Acts

(*a*) 13 Halsbury's Statutes 850.

(*b*) *Ibid.*, 861.

(*c*) *Ibid.*, 890.

(*d*) *Ibid.*, 906.

(*e*) Public Libraries Act, 1919, s. 11 ; 13 Halsbury's Statutes 970.

(*f*) 13 Halsbury's Statutes 933. To be replaced on October 1, 1937, by P.H.A., 1936, s. 155.

(*g*) 13 Halsbury's Statutes 378.

(*h*) See title ADOPTIVE ACTS, at p. 102 of Vol. I.

for the whole or any part of the county, exclusive of any part of the county which is an existing library area (*i*). An existing library area is a district in which the Acts are already in force and in which expenses have been incurred for the purposes of the Acts within the last preceding financial year (*k*), or in which a public library has been established and is maintained under the provisions of a local Act (*l*). Where a resolution of adoption is passed by a county council, the power to adopt the Acts for any borough, district or parish within the area for which the county council adopt the Acts, ceases (*m*).

Subject to the above restriction, in boroughs and urban districts the Acts may be adopted by a resolution of the council (*n*), and in rural parishes the Acts may be adopted by resolution of the parish meeting (*o*) or on a poll demanded before the conclusion of the meeting. The provisions as to a poll of the ratepayers, with respect to the adoption of the Acts in parishes, contained in sect. 3 of the Public Libraries Act, 1892, although not expressly repealed, have been superseded by sect. 7 of the L.G.A., 1894, and para. 5 of Part VI. of the Third Schedule to the L.G.A., 1933 (*p*). A bare majority of the parish meeting or poll is sufficient to effect adoption.

On the adoption of the Acts for any area the local authority must give notice in writing of such adoption to the M. of H. and to the Board of Education (*q*). [99]

Library Authority.—After adoption, the Acts are to be carried into execution by the library authority which is, in counties, the county council; in boroughs or urban districts, the borough council or U.D.C.; and in rural parishes the parish council (*r*). In rural parishes having no parish council, the parish meeting may appoint a body of commissioners to carry the Act into execution in accordance with the provisions of sects. 5—8 of the Public Libraries Act, 1892. If any such parish is not included in an area for which the county council have adopted the Acts, the better course, if the county council are unwilling to adopt, is to ask them under sect. 273 of the L.G.A., 1933 (*s*), to confer on the parish meeting the power of a parish council to execute the Public Libraries Acts. [100]

Transfer and Relinquishment of Powers.—Any library authority, not being the council of a county borough, may, on such terms as may be agreed upon between the authority and the county council and approved by the Board of Education, relinquish any of their powers

(i) Public Libraries Act, 1919, s. 1 (1); 13 Halsbury's Statutes 966.

(k) This provision bars a mere resolution of adoption by authorities having no intention of carrying the Acts into operation but wishing to prevent a county adoption for their area.

(l) Public Libraries Act, 1919, s. 10; 13 Halsbury's Statutes 970.

(m) Public Libraries Act, 1919, s. 1 (2); 13 Halsbury's Statutes 966.

(n) Public Libraries Act, 1892, s. 2; 13 Halsbury's Statutes 801; Public Libraries Act, 1919, s. 7; 13 Halsbury's Statutes 969.

(o) L.G.A., 1894, s. 7; 10 Halsbury's Statutes 779.

(p) 26 Halsbury's Statutes 503. A poll may not be taken unless either the person presiding at the parish meeting consents, or the poll is demanded by not less than five, or one-third of the local government electors present at the meeting, whichever is the less.

(q) Public Libraries Act, 1901, s. 8; 13 Halsbury's Statutes 892; M. of H. (Public Libraries, etc., Transfer of Powers) Order, 1920 (S.R. & O., 1920, No. 810).

(r) Public Libraries Act, 1892, s. 4; 13 Halsbury's Statutes 852; L.G.A., 1894, s. 7; 10 Halsbury's Statutes 779. Public Libraries Act, 1919, s. 1; 13 Halsbury's Statutes 966.

(s) 26 Halsbury's Statutes 451.

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and duties under the Acts to the county council (*t*). The powers and duties so relinquished then cease and the provisions of the Acts have effect as if the county council had passed a resolution adopting the Acts as respects that area (*t*). Any property or rights acquired for the purposes of the performance of the powers and duties under the Acts are transferred to, and become vested in, the county council, and any liabilities incurred for the same purpose become liabilities of the county council (*u*). [101]

A county council, by whom a resolution of adoption has been passed under the Act of 1919, may, if it be thought advisable with a view to the better carrying into effect of the provisions of the Acts in any district (*a*) within the area for which the county is the library authority, apply to the Board of Education for an order rescinding the resolution of adoption in so far as it relates to that district. On such application the Board may make an order accordingly, and the Acts, as respects that district, will have effect as from the date specified in the order as though the county resolution of adoption had not been passed (*b*). On the making of such an order the Acts are carried into execution by the library authority of the district which would have functioned if the county had not adopted the Acts for that district. The rescinding order may contain the necessary provisions as to the transfer of any property or rights acquired, or liabilities incurred, under the Public Libraries Acts from the county council to the library authority of the district concerned, but no liabilities may be transferred without the consent of the library authority of that district (*c*). [102]

Combination. (*d*)—Where the Acts are adopted for two or more neighbouring rural parishes, an agreement to combine for any period for carrying the Acts into execution may be entered into between such parishes (*e*). A rural parish adjoining or near to any library district for which the Acts have been adopted or in which their adoption is contemplated, may, with the consent of the parish meeting, be annexed to and form part of the library district (*f*). In this case the parish may appoint commissioners to be members of a joint body, but there is now a more convenient method whereby local authorities may appoint a joint committee for any purpose in which they are jointly interested (*g*). [103]

Where the Acts are adopted by two or more neighbouring boroughs or urban districts, the library authorities may agree to combine for any period for carrying the Acts into execution, and their expenses may be defrayed by the authorities in such proportions as may be agreed upon by them (*h*). They may appoint a joint committee for the purposes

(*t*) Public Libraries Act, 1919, s. 2 (1); 13 Halsbury's Statutes 967.

(*u*) Public Libraries Act, 1919, s. 2 (2).

(*a*) "District" means, as the case requires, either a library district or a district which would have been a library district if a resolution adopting the Acts had not been passed by the county council; see *ibid.*, s. 5 (3). A library district is a borough or urban district or a rural parish; see Act of 1902, s. 1 (2); 13 Halsbury's Statutes 850.

(*b*) Public Libraries Act, 1919, s. 5 (1); 13 Halsbury's Statutes 968.

(*c*) *Ibid.*, s. 5 (2).

(*d*) As to Joint Committees for combined library authorities, see title LIBRARY COMMITTEES.

(*e*) Public Libraries Act, 1892, s. 9 (1); 13 Halsbury's Statutes 858, as amended by L.G.A., 1894, s. 7 (3).

(*f*) Public Libraries Act, 1892, s. 10.

(*g*) L.G.A., 1933, s. 91; 26 Halsbury's Statutes 355.

(*h*) Public Libraries (Amendment) Act, 1903, s. 4; 13 Halsbury's Statutes 861.

of the Acts, with such powers, except the borrowing of money, as may be conferred by the combining authorities, and persons who are not members of the authorities may serve on the joint committee (i). A similar arrangement may be made between a library authority and the governing body of any library established or maintained out of charitable funds controlled by the Board of Education (j). In this case, if the governing body is unable to enter into such an agreement the Board may become a party to the agreement on behalf of the governing body (j).

Library authorities may also agree to share the cost of the purchase, erection, repair and maintenance of any library building already established in one of their areas in such proportions and for such period as may be agreed upon (k). They may also make an agreement as to the cost of purchase of books and newspapers and all other expenses connected with the library, as to the management and use of it, and as to interchange, hire and use of the books and newspapers belonging to the authorities (k).

Any agreement of combination between two or more library authorities, or between a library authority and any other body, may provide that, on the termination of the agreement, an adjustment shall be made of the interests of the parties in any property to the provision of which they have contributed. In the event of any dispute an adjustment is to be made by an arbitrator appointed by the M. of H. on the application of any of the parties (l). [104]

PROVISION, EQUIPMENT AND MANAGEMENT OF LIBRARIES, MUSEUMS AND ART GALLERIES

Provision and Equipment.—Library authorities may provide and maintain public libraries, public museums, and art galleries and for these purposes may purchase and hire land, and erect, take down, rebuild, alter, repair and extend buildings, and fit, furnish and supply them with all requisite furniture, fittings and conveniences (m). The general management, regulation and control of every library, museum and art gallery provided under the Acts is vested in, and must be exercised by, the library authority (n). The authority may, for the purposes of any library, museum or art gallery, provide books, newspapers, maps, specimens of art and science, and cause them to be bound and repaired when necessary (n). Once the Acts have been adopted and any of these facilities has been provided, the remainder may be provided at any time without further proceedings for the adoption of the Acts being taken (o). [105]

Before the Act of 1919, museums could also be established under the Museums and Gymnasiums Act, 1891. Sect. 9 of the Act of 1919, however, repealed the power to provide museums under the Museums Act so that they may now be established only under the Public Libraries Acts. This matter will be fully dealt with in the title MUSEUMS, Vol. IX. The provision and maintenance of art galleries is dealt with in the title ART GALLERIES, at p. 433 of Vol. I.

By sect. 11 of the Public Libraries Act, 1892, library authorities were also empowered to provide and maintain schools for science and

(i) Public Libraries (Amendment) Act, 1893, s. 4.

(j) Public Libraries Act, 1892, s. 16 (2).

(k) Public Libraries Act, 1892, s. 24.

(l) *Ibid.*, s. 15 (1).

(m) Public Libraries Act, 1901, s. 5.

(n) *Ibid.*, s. 11 (1).

(o) *Ibid.*, s. 11 (2).

schools for art, but sect. 8 of the Act of 1919 provided that this power should cease, without prejudice to the power of maintaining under the Libraries Acts any school already established. [106]

It is understood that the payment of the reasonable expenses of two delegates (p) to the annual Library Association conference from a library authority whose accounts are subject to district audit is usually allowed by the M. of H. Where a general sanction has been secured individual application to the Minister is not normally required, provided the proposed expenditure is within the limits indicated.

There are no provisions in the Public Libraries Acts authorising expenditure on the provision of lectures. Lectures are provided by library authorities, however, expenses being met out of monies received as fines or from the sale of books, etc. Some local authorities are empowered by local Act to provide lecture rooms, cause lectures to be delivered and to charge for admission, such powers being exercised in their capacity of higher education authority or otherwise, but lectures so provided usually form part of the library activities (q). [107]

Land and Buildings (r).—The provisions as to the acquisition, appropriation or disposal of land by local authorities contained in Part VII. of the L.G.A., 1933, do not extend to library authorities (s).

A library authority may purchase and hire land, and erect, take down, rebuild, alter, repair and extend buildings (t). For the purpose of the purchase of land the provisions of the Lands Clauses Acts, with the exception of the provisions relating to the purchase of land otherwise than by agreement, are incorporated with the Act of 1892 (u). Certain library authorities may, however, be authorised to acquire land compulsorily (see *post*, p. 53). With the sanction of the M. of H. the library authority of a borough or urban district, or of a metropolitan borough, may appropriate for the purposes of the Acts any land vested in them (a). [108]

A library authority may, with the sanction of the Board of Education, sell any land vested in them for the purposes of the Public Libraries Acts, or exchange any such land for other land better adapted for the purposes of the Acts. Any money arising from the sale or received by way of equality of exchange, is to be applied in or towards the purchase

(p) Usually a councillor and an officer such as the librarian.

(q) The following model clauses may be mentioned: (a) "In addition to any other powers exercisable by the corporation whether as the local education authority or otherwise they may expend on the provision of lectures on educational or other subjects such sum as they may from time to time think fit not exceeding in any one year the sum of [£100—£300]"; or (b) "It shall be lawful for the corporation in any library provided by them to provide suitable lecture rooms and to cause lectures to be given on such subjects as the corporation think fit, and to let such rooms and to make reasonable charges for admission to such lectures; provided that the sum expended in any one year shall not exceed the sum of [£100—£300]."

(r) See also *titles ACQUISITION OF LAND (OTHER THAN COMPULSORY); COMPULSORY PURCHASE OF LAND*.

(s) L.G.A., 1933, s. 179 (g), and Sched. VII.; 26 Halsbury's Statutes 404, 509.

(t) Public Libraries Act, 1892, s. 11 (1); 13 Halsbury's Statutes 854.

(u) *Ibid.*, s. 13 (1).

(a) *Ibid.*, ss. 12 (2), 23. These powers were not transferred to the Board of Education by S.R. & O., 1920, No. 810. A local authority decided to appropriate about a quarter of an acre at one extremity of a public garden vested in them, as a site for town buildings, museum, library, school for art and conservatory. *BACON*, V. C., held that no portion of the land could be appropriated for any of these purposes, but that a museum and conservatory could be provided as a reasonable addition to the amenities of a pleasure ground. It was held on appeal that the creation of a library was similarly allowable. *A-G. v. Sunderland Corp.* (1870), 2 Ch. D. 634; 11 Digest 120, 133.

of other land, or it may be applied to a library or educational purpose of a capital nature with the approval of the Board, or to any other capital purpose with the approval of the M. of H. (b). A house or building, or any part of it, or any land vested in the library authority for the purposes of the Acts which is not required for those purposes, may be let, the rents and profits being applied for purposes connected with the execution of the Acts (c). Where premises have been acquired for the purposes of the Public Libraries Acts they may not be used for any other purpose (d), except with the consent of the M. of H. under the general powers of appropriation. [109]

Any person holding land for ecclesiastical, parochial or charitable purposes may grant or convey, by way of gift, sale, or exchange, for any purpose of the Public Libraries Acts, any quantity of such land not exceeding one acre (e). However, none of this property may be granted or conveyed without certain consents, namely, ecclesiastical property without the consent of the Ecclesiastical Commissioners, parochial property without the consent of the M. of H., and other charitable property without the consent of the Charity Commissioners (e). Land taken in exchange or the money received for a sale of land must be held on the same trusts as the land exchanged or sold. Land situated in London, or in any borough or urban district of over 20,000 inhabitants, which is held on trusts to be preserved as an open space, or on trusts which prohibit building thereon, may not be granted or conveyed for the purposes of the Acts (e). Any land granted or conveyed to a library authority may be held without a licence in mortmain (f).

All land appropriated, purchased or rented, and all other real and personal property presented to or purchased or acquired for any library, museum, or art gallery under the Acts is vested in the library authority (g). [110]

A library authority, who are also a local education authority for higher education, may be authorised to purchase land compulsorily for the purpose of their powers or duties under the Libraries Acts in the same manner as they are authorised to purchase land compulsorily for the purpose of their powers or duties under the Education Act, 1921 (h). Land may therefore be purchased compulsorily by means of an order submitted to and confirmed by the Board of Education in accordance with the provisions of the Fifth Schedule to the Education Act, 1921 (i), and of the Board of Education (Compulsory Purchase) Regulations, 1933 (k). See also title COMPULSORY PURCHASE OF LAND, in Vol. III. [111]

(b) Public Libraries Act, 1892, s. 12 (3), and see S.R. & O., 1920, No. 810.

(c) Public Libraries Act, 1892, s. 12 (4).

(d) *A.-G. v. Westminster City Council*, [1924] 2 Ch. 416; 38 Digest 227, 586.

In this case a certain library building had been closed at the outbreak of the war and used for national purposes. It had remained closed ever since, except that for a time, as a result of protests by ratepayers, one floor was opened as a reference library. In 1920, the council decided to incorporate the library premises with the city hall for administrative purposes, and up to the date of the writ in the action no alternative premises were procured, while the books had been removed to other libraries in the council's area. The Court of Appeal held the council's action to be *ultra vires* and that an injunction ought to be granted to restrain the unauthorised user.

(e) Public Libraries Act, 1892, s. 13 (1); 13 Halsbury's Statutes 855.

(f) Public Libraries Act, 1892, s. 13 (3).

(g) *Ibid.*, s. 14; 13 Halsbury's Statutes 856.

(h) Public Libraries Act, 1919, s. 6; 13 Halsbury's Statutes 969.

(i) Education Act, 1921, s. 111 and Sched. V; 7 Halsbury's Statutes 190, 223.

(k) S.R. & O., 1933, No. 1021.

Staff.—The appointment of the librarian has been dealt with separately under the title **LIBRARIAN**.

The L.G.A., 1933, provides that the council of a county, borough or urban district shall appoint such officers as the council think necessary for the efficient discharge of the functions of the council (l). Any such officer may receive such reasonable remuneration as the council determine and holds his office during the pleasure of the council unless a special agreement for notice to be given before resignation or dismissal is made under sect. 121 of that Act (m). A local authority, other than a parish council, may require an officer to give security for the faithful execution of his office or for his duly accounting for all money or property which may be entrusted to him (n). [112]

Where a parish council are the library authority, sect. 15 (2) of the Public Libraries Act, 1892, authorises the council to appoint salaried officers and servants and dismiss them (o). Neither the Act of 1892 nor the L.G.A., 1933, provide for security being taken by a parish council from an officer, but if security is considered necessary the council might agree with the officer that he should take out a guarantee policy, and that the officer's remuneration should be increased to cover the premium payable by the officer on the policy. [113]

The senior posts in libraries should be filled only by trained persons, qualified by education and experience, and it is customary to stipulate in advertisements inviting applications for vacant posts that candidates must possess the Fellowship of the Library Association. The Association has adopted a series of recommendations of its Service Conditions Committee on the grading of staffs, salaries, hours, etc., which have been issued for the information and guidance of local authorities. The Association of Assistant Librarians (p) has also issued a report on the hours, salaries, training and conditions of service in British Municipal Libraries (q). [114]

Admission.—No charge may be made for admission to a library or museum provided under the Acts (r). Neither may a charge be made for the use of a lending library by inhabitants of the area, but the library authority, if they think fit, may grant the use of a lending library to persons not being inhabitants of the area, either gratuitously or for payment (r). The library authority may make regulations for the admission of the public to any library, museum or art gallery under their control (s). [115]

Sect. 4 of the Sunday Entertainments Act, 1932 (t), exempts persons from prosecution under the Sunday Observance Acts, 1625 to 1780 (u), in respect of the opening on Sundays of any museum.

(l) L.G.A., 1933, ss. 105, 106, 107; 26 Halsbury's Statutes 361, 362.

(m) 26 Halsbury's Statutes 370.

(n) L.G.A., 1933, s. 119; 26 Halsbury's Statutes 360.

(o) This power in s. 15 (2) is not repealed as to parish councils or library commissioners by the L.G.A., 1933, or as to London.

(p) A section of the Library Association.

(q) Copies of this Report (price 2s. 2d. post free) may be obtained from the Library Association, Chancery House, Malet Place, W.C.1.

(r) Public Libraries Act, 1892, s. 11 (3).

(s) *Ibid.*, s. 15 (2); 13 Halsbury's Statutes 856. In view of the express condition that no charge shall be made for admission to, or use of, a lending library by inhabitants of the district, the practice of making a nominal charge for the issue of readers' tickets would seem to be contrary to the Acts except as a guarantee or security against the loss of or injury to any book imposed by bye-laws under s. 8 of the 1919 Act.

(t) 25 Halsbury's Statutes 924.

(u) 4 Halsbury's Statutes 321, 325, 379.

picture gallery, zoological or botanical garden or aquarium, or of any place at which a lecture or debate is held on Sunday. Lending or reference libraries are, however, generally closed on Sundays. [116]

Infected Books and Persons.—The provisions as to infected library books contained in sect. 59 of the P.H.A. Amendment Act, 1907 (*a*), may be applied to any borough or district by an order of the Minister made on the application of the council. This section provides that if any person knows that he is suffering from an infectious disease he must not take or use, or cause to be taken for his use, any book from a public library, nor must a book be returned to the library after it has been exposed to infection, but notice of such exposure must be given by the borrower to the local authority. A contravention of this section gives rise to a liability to a fine of 40s.

When the librarian has been informed that a book has been exposed to infection, he must give notice to the M.O.H. who either disinfects the book and returns it to the library or destroys it. The cost of replacement of books which have been so destroyed is usually borne by the library, but in some cases the cost is defrayed by the public health department.

It is also an offence for any person while suffering from any dangerous infectious disorder, wilfully to expose himself, without proper precautions against its spread, in any public place or street (*a*). [117]

Offences in Libraries.—The Libraries Offences Act, 1898 (*b*), applies by virtue of sect. 3 of the Act to any library provided and maintained under the Public Libraries Acts, and to any library or reading-room maintained by a society registered under the Industrial and Provident Societies Act, 1893 (*c*), or under the Friendly Societies Act, 1896 (*d*), or by any registered trade union; and also to any museum, art gallery or school provided under the Public Libraries Acts (*e*). Sect. 2 of the Act of 1898, provides that any person who, in any library or reading-room to which it applies, to the annoyance or disturbance of any person using the same, behaves in a disorderly manner, uses violent, abusive, or obscene language, bets or gambles, or who, after proper warning, persists in remaining therein beyond the hours fixed for closing, is liable on summary conviction to a penalty not exceeding 40s. By-laws may be made enabling the officers and servants of the authority to exclude or remove any person committing any offence against this Act or against the bye-laws in any library or other institution provided and maintained by the library authority (*f*).

It is a misdemeanour under sect. 39 of the Malicious Damage Act, 1861 (*g*), unlawfully and maliciously to destroy or damage any book, manuscript, picture, statue or any other article or thing kept for the purposes of art, science or literature, or as an object of curiosity in any library, museum, gallery, etc. (*h*). Damages for the injury may also be recovered by action. [118]

(*a*) 13 Halsbury's Statutes 933. To be replaced by P.H.A., 1936, s. 155, which will operate without an order.

(*a*) P.H.A., 1875, s. 126; 13 Halsbury's Statutes 676. To be replaced by P.H.A., 1936, s. 148.

(*b*) 13 Halsbury's Statutes 878.

(*c*) 9 Halsbury's Statutes 720.

(*e*) Public Libraries Act, 1901, s. 4.

(*g*) 4 Halsbury's Statutes 573.

(*d*) 8 Halsbury's Statutes 933.

(*f*) *Ibid.*, s. 3.

(*h*) On conviction an offender is liable to imprisonment for a term not exceeding six months, with or without hard labour, and if a male under the age of sixteen, with or without whipping. *Ibid.*

Bye-Laws and Regulations.—A library authority may make bye-laws relating to any library, museum, art gallery or school (i) which is under their control for all or any of the following purposes : (i.) for regulating the use of the same and of the contents thereof, for protecting the same and the fittings, furniture and contents thereof from injury, destruction or misuse ; (ii.) for requiring from any person using the same any guarantee or security against the loss of or injury to any book or other article ; (iii.) for enabling the officers and servants of the authority to exclude or remove therefrom persons committing any offence against the Libraries Offences Act, 1898 (k), or against the bye-laws (l). All bye-laws of a library authority must be made subject and according to the provisions respecting bye-laws contained in sect. 250 of the L.G.A., 1933 (m), and must be submitted to the Board of Education, who may confirm, allow or disallow them (n). Offences and penalties under any bye-law may be prosecuted and recovered summarily (o). The powers of local authorities as to bye-laws have been dealt with at length in the title **BYE-LAWS** in Vol. II. A model set of suggested bye-laws for libraries was drawn up recently by the Library Association with the approval of the Board of Education (p).

A library authority may also make regulations for the safety and use of any library, museum, art gallery or school under their control, and for the admission of the public thereto (q). Such regulations do not require confirmation and are not enforceable by penalties. A model set of regulations was prepared by the London and Home Counties Branch of the Library Association in 1928. [119]

County Libraries.—The Public Libraries Act, 1919, enabled county councils to establish a library service under the provisions of the Public Libraries Acts. Prior to the passing of this Act many areas were entirely without library facilities. The objects of a county library are : (i.) to provide a service for purely rural areas which have either no library at all or an inadequate library maintained by private generosity ; (ii.) to establish nucleus stationary libraries in small boroughs and urban districts which have no library service ; and (iii.) to supplement the service given by existing public libraries in small areas which have not been able, with the means at their disposal, to supply a service adequate to the needs of the population (r). The basis of a county library system is the formation of a central collection of books, and the distribution of a selection to centres throughout the area (s).

A county council may also take over the powers and duties under the

(i) The power to provide schools for science or for art was repealed, without prejudice to existing schools, by Public Libraries Act, 1919, s. 8, see *ante*, pp. 51, 52.

(k) See *ante*, p. 55.

(l) Public Libraries Act, 1901, s. 3 ; 18 Halsbury's Statutes 891.

(m) 26 Halsbury's Statutes 450. The provisions of s. 250 apply to bye-laws to be made by a local authority by virtue of any enactment in force at the date of commencement of the L.G.A. incorporating or applying ss. 182—186 of the P.H.A., 1875. The Public Libraries Act, 1901, s. 3 (2), applied those sections and provides that the expression " local authority " shall include a library authority.

(n) M. of H. (Public Libraries, Museums and Gymnasiums Transfer of Powers) Order, 1920 ; S.R. & O., 1920, No. 810.

(o) Public Libraries Act, 1901, s. 3 (3) ; 18 Halsbury's Statutes 891.

(p) These model bye-laws are printed (with permission) in the Library Association Year Book.

(q) Public Libraries Act, 1892, s. 15 (2) ; 18 Halsbury's Statutes 856.

(r) Public Libraries Committee Report, 1927, Cmd. 2868, para. 278.

(s) *Ibid.*, para. 305.

Acts from the library authority of any area within the county (*t*). On such a voluntary relinquishment of powers to the county council, the library service already established within the area is taken over and administered by the county.

The staffing of county libraries has been dealt with under "County Librarian" in the title LIBRARIAN, *ante*, p. 47. [120]

FINANCIAL PROVISIONS AND BORROWING

The following financial provisions apply to libraries, museums, art galleries and gymnasia and the terms "library expenses" or "library rate" include expenses and rating for the purposes of all such institutions.

Rate Limit.—There is now no general statutory limit upon library expenditure, the rate limitation of one penny in the pound having been removed by sect. 4 (1) of the Act of 1919. If, however, a library authority, either at the time when the Acts are adopted or at any subsequent time, by resolution declare that the rate to be levied for the purposes of the Acts in the district, or in any specified portion thereof, in any one financial year, shall not exceed such a sum in the pound as may be specified, the power to raise the rate is limited accordingly (*u*). Such a resolution may not be rescinded until the expiration of twelve months from the date on which it was passed (*u*).

In a borough or urban district where the Museums and Gymnasiums Act, 1891, was adopted before 1919, but which is not a library district under the Public Libraries Acts, the amount expended by the council may not in any one year exceed the amount produced by a rate of five-sixths of a penny in the pound for a museum and a like amount for a gymnasium established under that Act (*a*). This rate limit does not apply to a museum which has been transferred to a library authority by virtue of sect. 9 of the Public Libraries Act, 1919.

Where the parish council are the library authority, there is no limit on their library expenditure, unless the parish council have limited the rate under sect. 4 (1) of the Act of 1919 already mentioned. As to a rural parish with no parish council, see sect. 193 (5) of L.G.A., 1933 (*b*). [121]

Defrayal of Expenses.—No separate library rate is now leviable and the expense of providing and maintaining libraries, museums, art galleries and gymnasia is defrayed in counties out of the county fund (*c*); in boroughs and urban districts, out of the general rate fund (*d*); and in rural parishes, as an additional item of the general rate (*e*).

A county council may, after giving reasonable notice to the rating authority of the district concerned, and in the case of an area situate within a borough (including a metropolitan borough) or urban district after consultation with the council of that borough or urban district, charge any expenses incurred by the county council under the Public Libraries Acts on any parish or parishes which, in the opinion of the

(*t*) See *ante*, pp. 49, 50.

(*u*) Public Libraries Act, 1919, s. 4 (1).

(*a*) Museums and Gymnasiums Act, 1891, s. 10 (5); 13 Halsbury's Statutes 849; L.G.A., 1929, s. 75; 10 Halsbury's Statutes 932.

(*b*) 26 Halsbury's Statutes 411.

(*c*) As special county expenses (Public Libraries Act, 1919, s. 4 (2)). No part of the cost can be imposed on any district or parish in the county which is itself a library authority, except with the consent of the authority.

(*d*) L.G.A., 1933, ss. 185 (1), 188 (1); 26 Halsbury's Statutes 407, 408.

(*e*) R. & V.A., 1925, s. 2 (6); 14 Halsbury's Statutes 620.

county council, are served by any institution provided or maintained under the Acts (f). A county council may not, however, charge any expenses so incurred on any parish or parishes within an existing library district (g) without the concurrence of the library authority of that district (f). Where a parish adjoining or near to a library district is annexed to such library district so much of the expenses incurred under the Acts as is chargeable to the parish must be defrayed in the same manner as if the parish were a separate library district (h).

Where the Acts are carried into execution by combined districts expenses are defrayed by the authorities in such proportions as may be agreed upon by them (i), and are met out of the general rate funds of the respective authorities. [122]

Rates and Taxes.—A public library is not exempt from liability to be rated. This was decided in the case of *Liverpool Corporation v. West Derby Union* (k) although a certificate of exemption had in that case been obtained under sect. 2 of the Scientific Societies Act, 1843 (l). The Registrar of Friendly Societies will not now grant such certificates to public libraries.

The exemption from income tax granted by sect. 61, Schedule A, No. VI. of the Income Tax Act, 1842, in respect of any building "the property of any literary or scientific institution" includes buildings appropriated to public libraries and used solely for the purposes of the libraries whoever may be the owners of the buildings, and whether they are or are not supported by rates (m). This exemption is now reproduced in Sched. A, No. VI. 1 (e) to the Income Tax Act, 1918 (n). The phrase "used solely for the purposes of the libraries" may exclude the buildings from the exemption if they are used for the purposes of lectures given by the library authority for which an admission fee is charged, unless the fees received are used solely towards defraying the expenses incurred in providing the lectures. Where accommodation was afforded to a subscription library whose books, after being in circulation for one year, became the property of the public library, it was held that the buildings were not used solely for the purposes of the public library and did not therefore fall within the exemption (o). [123]

Accounts and Audit.—Separate accounts must be kept of the receipts and expenditure under the Public Libraries Acts of every library authority and their officers (p). Part X. of the L.G.A., 1938, relating to Accounts and Audit, covers libraries, museums, etc., so that the accounts of every county council, metropolitan borough council, urban district council, parish council and parish meeting, or any committee appointed by any such council or parish meeting, and of any joint committee of which one of these bodies is a constituent authority, are subject to audit by a district auditor under that Act (q). A

(f) Public Libraries Act, 1919, s. 4 (2); 13 Halsbury's Statutes 968.

(g) The definition of "existing library area" in s. 10 hardly seems to apply.

(h) Public Libraries Act, 1892, s. 18 (3).

(i) Public Libraries (Amendment) Act, 1893, s. 4 (1); L.G.A., 1938, s. 93; 26 Halsbury's Statutes 856.

(k) (1905), 69 J. P. 277; 38 Digest 494, 494.

(l) 10 Halsbury's Statutes 479.

(m) *Manchester Corpn. v. McAdam*, [1890] A. C. 500; 28 Digest 14, 66.

(n) 9 Halsbury's Statutes 544.

(o) *Musgrave v. Dundee Magistrates and Town Council* (1897), 3 Tax Cases, 552; 28 Digest 13, 65 i.

(p) Public Libraries Act, 1892, s. 20 (1); 13 Halsbury's Statutes 858.

(q) S. 219; 20 Halsbury's Statutes 424.

municipal borough may, by resolution, adopt the system of district audit or of professional audit, but the system of audit by elective auditors is still permitted by the L.G.A., 1933, sect. 237 (r).

As to general principles, methods of accountancy, audit generally, and inspection of, and extracts from, accounts, see titles ACCOUNTS OF LOCAL AUTHORITIES; AUDIT; AUDITORS, in Vol. I. [124]

Borrowing.—Every library authority, with the sanction of the M. of H., may borrow money for the purposes of the Public Libraries Acts (s), but a parish council may borrow only with the consent of the county council and of the Minister (t). The provisions relating to borrowing contained in the P.H.A., 1875, and the L.G.A., 1888, which were applied to libraries, etc. by sect. 19 of the Public Libraries Act, 1892, and sect. 1 (3) of the Public Libraries Act, 1919, have, for the most part, been re-enacted in Part IX. of the Act of 1933, which is dealt with in the title BORROWING in Vol. II. The Public Works Loans Commissioners may lend any money which may be borrowed by a library authority (u).

The usual periods allowed for the repayment of loans are: land, 60 years; buildings (including extensions and alterations), 30 years; furniture and fittings, 15 years; books, 5 years. [125]

INSTITUTIONS NOT SUBJECT TO THE PUBLIC LIBRARIES ACTS

Technical and Industrial Institutions Act, 1892.—The object of this Act (a) is to facilitate the acquisition and holding of land by institutions for promoting technical and industrial instruction and training. The Act is more immediately connected with higher education than with the provision of public libraries and applies to every institution established, either before or after its passing, for the provision, in connection with higher education, of (*inter alia*) libraries and reading-rooms (sect. 2 as amended). The governing body of the institution, who are empowered to make bye-laws and rules for its management and conduct, may be any body corporate, council, public authority, local authority, trustees, or other body of persons willing, elected, or appointed, to undertake the government of the institution (sect. 3).

The Lands Clauses Acts (except the provisions relating to compulsory purchase, and certain other provisions) are incorporated with the Act of 1892 by sect. 4. Sects. 5 and 6 empower the governing body to take, and have conveyed to them or to trustees, by way of sale, exchange, or gift, land required for the purposes of the institution, while sect. 7 provides for certain restrictions with regard to the amount of land which may be conveyed. [126]

Every institution for which land is acquired under the Act is to be open generally either to all persons, or to all persons within specified limits as to age, qualification, or otherwise, either without payment or on specific terms as to times of attendance, or payment of subscriptions or fees, but no preference is to be given to any person or class of persons within those limits (sect. 8).

(r) Ss. 237—239; 26 Halsbury's Statutes 433, 434.

(s) Public Libraries Act, 1892, s. 19 (1); Public Libraries Act, 1919, s. 1 (3); as in part repealed by L.G.A., 1933.

(t) L.G.A., 1933, s. 195; 26 Halsbury's Statutes 412. Money authorised to be borrowed by a parish council may be lent by the county council.

(u) Public Libraries Act, 1892, s. 19 (8); 19 Halsbury's Statutes 858.

(a) 7 Halsbury's Statutes 289.

Land acquired under the Act is not to be used otherwise than for the purposes of an institution within the meaning of the Act, and may, with the consent of the Board of Education, be sold or exchanged for other land (sect. 9).

Parts I. and II. of the Mortmain and Charitable Uses Act, 1888, and so much of the Mortmain and Charitable Uses Act, 1891, as requires land assured by will to be sold within one year from the death of the testator, do not apply to conveyances or assurances by will made under or for the purposes of the Act (sect. 10). Any corporate body may acquire and hold land for the purposes of the Act without any licence in mortmain (*ibid.*). [127]

Carnegie United Kingdom Trust.—This trust was founded by Mr. Andrew Carnegie in 1913, its general purpose being "the improvement of the well-being of the masses of the people of Great Britain and Ireland by such means as are embraced within the meaning of the word 'charitable,' according to Scotch and English law" (*b*). The trustees took over a large number of promises made by the Founder to pay grants for the erection of municipal libraries, and continued to honour such promises as were claimed within a reasonable time. A few new promises were made, but this policy was discontinued in 1921. In 1915, the trustees launched the county library experiment, paying the whole cost up to the passing of the Public Libraries Act, 1919, which gave library powers to county councils, and thereafter the capital cost only. There were in 1935, when the policy practically came to an end, only three counties in England, one in Scotland, and three in Ireland, without a library service. From 1925 to 1935 the trustees gave book-purchase grants to the smaller urban libraries, largely as a lever to promote co-operation between them and their respective county councils.

In 1930, the trustees initiated the regional library service as the natural extension of the co-operative principle, and during the quinquennium 1930-40 the trustees have decided on the continuation of that part of the municipal library policy which was designed to encourage the amalgamation of small borough and urban district libraries with county schemes. For this purpose a small allocation has been set aside from which grants will be available. The apex of this co-ordinated national service is the National Central Library. The functions of this library and of the regional library service are dealt with in the following sub-title. [128]

National Central Library and Regional Library Bureaux.—This library was founded in 1916 as the Central Library for Students, but in 1931, as the result of the recommendations of the Royal Commission on National Museums and Galleries, it was reconstituted as the National Central Library and incorporated by Royal Charter. The functions (*c*) of the library, *inter alia*, are: (1) to supply on loan to libraries books for study which cannot conveniently be obtained in any other way; (2) to supply such books on loan to groups of adult students; (3) to act as an exchange or clearing house for mutual loans of such

(b) The headquarters of the trust are at Comely Park House, Dunfermline, Fife, and applications for particulars should be made to the Secretary, Lt.-Col. J. M. Mitchell, C.B.E., LL.D.

(c) Particulars of the service given by the National Central Library may be obtained from the librarian of any public or other library. The library is situate in Malet Place, London, W.C.1.

books between other libraries; and (4) to facilitate access to books and information about books. The library is the recognised source from which the libraries in Great Britain and Ireland (university, special, urban and county) obtain scarce and important books which they are unable to supply from their own shelves, and is the centre of the scheme of regional co-operation throughout the country. The Carnegie United Kingdom Trust has contributed largely to the formation of the library and to the various regional library systems of which there are now eight. The following is a list of the systems, giving the library at which the Bureau of each particular system is housed: Cornwall (County Library, Truro); East Midland (Leicester Public Library); Northern (Literary and Philosophical Society, Newcastle-on-Tyne); North Western (Manchester Public Library); South Eastern (National Central Library, London); Wales (National Library of Wales, sub-bureau at Cardiff); West Midland (Birmingham Public Library); and Yorkshire (centres at Bradford, Hull, Leeds and Sheffield). These systems cover the whole of England and Wales with the exception of seven counties in the south-west. The establishment of a system for the whole of Scotland is under consideration. During the period 1936-40, it is the intention of the Carnegie Trustees to assist, with grants, the completion of the regional library service. [129]

The National Central Library is the clearing house for the lending of non-fiction books between libraries of all types. It has access to the books in over 150 libraries throughout the country, known as "outlier libraries," and to the books in the London borough libraries, the London Union Catalogue being housed in the library. This vast system of inter-library lending makes it possible for almost any book to be available to the reading public in any part of the country.

On an application being made to a library for a book not on the shelves the normal procedure for securing it on loan is that (1) the library will apply to the Regional Library Bureau; (2) the Bureau will consult the regional union catalogue and forward the request to the library in the area which has the book or to the National Central Library; (3) the National Central Library will (i.) supply the book from stock, (ii.) buy a copy, (iii.) obtain it from an "outlier library," (iv.) apply to other regional bureaux; or (v.) apply to one of the foreign national collections. The normal period for the loan of a book is one month, and the sole expense to the borrower is the cost of postage, which is sometimes paid in whole or in part by the borrowing library. [130]

National Library for the Blind.—The National Library for the Blind (d), was founded in 1882, and is registered under the Blind Persons Act, 1920 (e). It is supported by grants under that Act, by grants from public libraries and by voluntary subscriptions. It contains over 150,000 volumes in Braille and Moon types representing every class of literature and music. Of the books listed in the catalogue 85 per cent. are in manuscript Braille, and are unprocureable elsewhere. Membership is free to all blind persons who may borrow direct from the National Library or through the local public library. A reader borrowing direct from the library is responsible for the cost of postage at the

(d) The National Library is housed at 35 Great Smith Street and 18 Tufton Street, Westminster, London, S.W.1. There is a Northern Branch at 5 St. John Street, Deansgate, Manchester.

(e) 20 Halsbury's Statutes 593.

rate of 1d. per volume unless the public library or some voluntary agency agrees to meet this expense.

A public library may enrol as a member and have regular consignments of books sent for the use of blind readers, the public library committee meeting the cost of postage on consignments in addition to bearing a proportion of the cost of supply. An alternative and more convenient method of borrowing is for the reader to be put into touch with the National Library by the public librarian. Books are then supplied by the National Library direct to the reader, the public library bearing cost of postage and a proportion of the other expenses involved. The estimated cost of supplying a reader is £2 per annum and, though there is no standard rate of subscription for public libraries, it is customary to make grants at the rate of 10s. per reader per annum, to cover the library's proportion of the expenses in addition to the cost of carriage. [131]

LONDON

The Public Libraries Acts have been adopted by all of the metropolitan boroughs and by the City of London, the library authority in boroughs being the borough council (*f*), and in the City the Common Council (*g*). Owing to the prior adoption by the City and the metropolitan boroughs, there is no area for which the L.C.C. could adopt the Acts under sect. 1 of the Public Libraries Act, 1919. Expenses under the Acts in the case of a borough are paid out of the general rate (*h*), and in the City out of the consolidated rate, or a separate rate may be levied (*i*). The provisions as to accounts and audit contained in Part X. of the L.G.A., 1933, extend to London (*k*). Borrowing by metropolitan boroughs as by other library authorities is under the authority of sect. 19 of the Public Libraries Act, 1902, but Part IX. of L.G.A., 1933, does not extend to London and the partial repeals of sect. 19 made by that Act do not cover London. Bye-laws are made under the authority of sect. 8 of the Public Libraries Act, 1901, which enacts that they shall be made subject and according to the provisions respecting bye-laws contained in sects. 182—186 of the P.H.A., 1875 (*l*), but here again the repeal of these sections by the L.G.A., 1933, does not extend to London, so that bye-laws will still be made according to their provisions. See the title BYE-LAWS in Vol. II. The appointment of staff in London is still made under sect. 15 (2) of the Public Libraries Act, 1892, which enables the library authority to appoint salaried officers and servants and to dismiss them. The appropriation of land has been dealt with *ante*, p. 52. For other purposes the law governing public libraries, etc., is the same in the metropolis as elsewhere. [132]

For official use, the L.C.C. maintain a considerable library of books, plans, prints, etc., particularly dealing with London and local government. A special education library of works of interest to teachers is also maintained. The council maintain a library attached to the Horniman Museum. [133]

(*f*) London Government Act, 1899, s. 4 (2); 11 Halsbury's Statutes 1227.

(*g*) Public Libraries Act, 1892, s. 21 (1); 13 Halsbury's Statutes 858.

(*h*) London Government Act, 1899, s. 10 (1); 11 Halsbury's Statutes 1231.

(*i*) Public Libraries Act, 1892, s. 21 (3); 13 Halsbury's Statutes 858.

(*k*) L.G.A., 1933, s. 243; 26 Halsbury's Statutes 437.

(*l*) 18 Halsbury's Statutes 704.

LIBRARY COMMITTEE

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*See also titles : COMMITTEES ;
LIBRARIES.*

Constitution.—A county borough may refer any matters relating to the exercise of powers under the Public Libraries Acts to the education committee, and may delegate to that committee any of those powers—except the power of raising a rate or borrowing money (*a*). In a county, or county borough which adopted the Libraries Acts after December 28, 1919, all matters relating to the exercise of powers under the Acts, except the power of raising a rate or borrowing money, must stand referred to the education committee, and, before exercising any such powers the council must, unless in their opinion the matter is urgent, receive and consider the report of the education committee (*b*). An education committee may, subject to any directions of the council, delegate all or any of their library powers to a sub-committee (*a*). [184]

The council of a borough or urban district were empowered by sect. 15 (8) of the Public Libraries Act, 1892 (*c*), to appoint a special library committee to execute all or any of the powers under the Acts. The L.G.A., 1933, however, repealed that sub-section so that a library committee would now be appointed under sect. 85 of that Act (*d*) by a library authority being the council of a borough, urban district or rural parish. Where a borough or U.D.C. have, under sect. 2 of the Public Libraries Act, 1919 (*e*), relinquished their powers under the Acts to the county council and, in return for an increased library service, their area is rated differentially, it is sometimes found desirable to appoint a committee to co-operate with the county council. [185]

Sub-Committees.—In practice it has been found desirable to delegate certain functions of the library committee, such as finance, book-purchase, staff, branches, buildings, etc., to sub-committees. The

(*a*) Public Libraries Act, 1919, s. 3 (2) ; 13 Halsbury's Statutes 967.

(*b*) Public Libraries Act, 1919, s. 3 (1). The position is that a county borough council who had adopted the Acts before 1920 may appoint a special library committee or may refer or delegate their powers to the education committee. If a county or county borough council adopted the Acts after 1919, their library powers stand referred to the education committee. In only one instance has a county borough council handed over their library powers to the education committee.

(*c*) 13 Halsbury's Statutes 850.

(*d*) 26 Halsbury's Statutes 352 ; and see title COMMITTEES.

(*e*) 13 Halsbury's Statutes 967.

chairman of the library committee usually acts *ex officio* as chairman of all such sub-committees.

As has already been stated, an education committee of a county or county borough council exercising library powers may delegate their powers to a library sub-committee. No special authority seems needed to allow a library committee to refer matters to a sub-committee of their number, but a committee to whom powers have been delegated cannot themselves delegate to a sub-committee. [136]

Joint Committees.—The provisions as to joint committees in sect. 91 of the L.G.A., 1933 (*f*), do not apply to combinations of library authorities for boroughs or urban districts, in view of sub-sect. (4) of that section, which excludes from it cases in which the appointing local authorities are authorised or required to appoint a joint committee by any other enactment for the time being in force. Sect. 4 of the Public Libraries (Amendment) Act, 1893 (*g*), as to joint committees was, therefore, not affected by the L.G.A., so that where the Acts are adopted by two or more neighbouring boroughs or urban districts and the library authorities for each area agree to combine for the purpose of carrying the Acts into execution, the authorities may appoint a joint committee on which the combining councils may confer such powers of a library authority, except the power of raising a rate or borrowing money, as may be agreed upon by them.

But where the combining authorities are parish councils, sect. 91 of the L.G.A., 1933, would apply. [137]

Membership.—A library sub-committee of an education committee of a county or county borough may consist either in whole or in part of members of the education committee (*h*). The number of members of a library committee appointed by a library authority being the council of a borough, urban district or parish, their term of office and the area in which the committee are to exercise their authority, are fixed by the council, and the committee may include persons who are not members of the local authority, provided that at least two-thirds of the members are members of the local authority (*i*). A member of a joint committee appointed by combined boroughs or urban districts need not be a member of any of the combining authorities (*h*). [138]

In practice the power of co-opting persons who are not members of the local authority on to committees is not widely used, except in the case of public library, museum, or art gallery committees, when the special knowledge of experts is of great use. The local authority, when appointing committees, usually prescribe the number of persons who may be co-opted, and often fix the maximum number at one-third of the membership of the committee (*j*).

(*f*) 26 Halsbury's Statutes 355.

(*g*) 13 Halsbury's Statutes 861.

(*h*) Public Libraries Act, 1919, s. 3 (2); 13 Halsbury's Statutes 967.

(*i*) L.G.A., 1933, s. 85 (3); 26 Halsbury's Statutes 352.

(*j*) Public Libraries (Amendment) Act, 1893, s. 4 (2); 13 Halsbury's Statutes 861.

(*k*) In this connection the Report of the Public Libraries Committee, 1927 (Cmd. 2868), at para. 127, states: "In regard to co-optation, considerable difference of opinion exists. We do not doubt the value of co-optation in securing a more expert committee. It is possible through co-optation, to take into account widely different and very important interests of the community. It secures for the library the enthusiastic service of persons specially qualified by education, inclination and experience to promote the library's growth, welfare and influence. On the other

A person who is disqualified under Part II. of the L.G.A., 1933, for being elected to, or being a member of, a local authority, is also disqualified for being a member of any committee, sub-committee or joint committee of the authority (*m*). Sect. 94 contains a proviso that a person shall not be disqualified for being a member of, *inter alia*, a "committee appointed under sect. 15 of the Public Libraries Act, 1892, by reason only of his being a teacher or holding any other office in a school or college which is aided, provided or maintained by the local authority appointing the committee" (*m*). [139]

Delegation of Powers.—A county council or county borough council adopting the Acts after 1919 must refer to the education committee any of their powers and duties under the Acts, except the power of raising a rate or borrowing money. In the case of a county borough council having adopted the Acts before 1919, reference to the education committee is permissive and not obligatory. An education committee may delegate any of their library powers to a sub-committee (see *ante*, p. 68).

Other library authorities may delegate to a committee, with or without restrictions or conditions, as they think fit, any functions exercisable by them either with respect to the whole or a part of their area, except the power of levying, or issuing a precept for, a rate, or of borrowing money (*n*).

A joint committee appointed for combined boroughs or urban districts may be given such of the powers of a library authority, except the power of borrowing money, as the combining authorities may confer upon them (*o*). Although the power of levying rates or issuing precepts is not excepted from the delegative powers, a joint committee appointed by parish councils is subjected to all three restrictions (*p*). But no doubt it is intended that the requests of all joint committees for funds should not be made in the form of precepts, but should be made by letters addressed by the clerk of the joint committee to the constituent councils. [140]

It will be seen that, with the exception of the power of raising a rate or of borrowing money, the powers under the Public Libraries Acts may be exercised by a committee of the local authority, with or without restriction (*q*).

Delegation of powers to a committee does not relieve the local

hand, it is undeniable that, in the view of many, co-optation is undemocratic, and that recommendations made by a committee largely composed of co-opted members are apt to meet with very special criticism when they come before the council for confirmation, more especially when the chairman of the committee is a co-opted member and is not, therefore, present at the council meeting to defend the policy of the committee."

(*m*) L.G.A., 1933, s. 94; 26 Halsbury's Statutes 356. But, except in its application to London, the Act, by the 11th Schedule, repeals s. 15 of the Public Libraries Act, 1892, to which it refers.

(*n*) L.G.A., 1933, s. 85 (1); 26 Halsbury's Statutes, 352.

(*o*) Public Libraries (Amendment) Act, 1893, s. 4 (2); 13 Halsbury's Statutes 861.

(*p*) See L.G.A., 1933, s. 91 (1); 26 Halsbury's Statutes 355.

(*q*) A committee may be executive, reporting or recommending. An *executive* committee, usually, has all the powers of a library authority and, as a rule, controls its own budget. A *reporting* committee has the powers of a library authority but is required to report its activities at stated intervals. It may make recommendations on any powers which may have been reserved to the council. A *recommending* committee may not act in any way without first securing the sanction of the council. Whatever limit is placed on the powers of a committee it is customary to allow some margin in the matter of expenditure. The purchase of books and stationery and routine expenses are usually permitted without reference to the council.

authority of liability for acts of the committee. In *Bungary v. Wel-lingborough U.D.C.* (r), an action for damages for personal injuries, caused by the negligence of the librarian, it was contended that the committee and not the council were liable, but it was held that the committee became only delegates of the powers and duties of the council and that the council remained liable. [141]

There is no statutory requirement as to the number of meetings of a library committee, but it should meet at regular intervals to receive reports and advice from the librarian (s). Meetings are held fortnightly, monthly or quarterly and in the case of sub-committees, weekly. The usual practice is that the committee meets monthly. During the interval between meetings the chairman is, as a general rule, empowered to act in an emergency.

Generally speaking the responsibility for the provision and maintenance of a good library service rests on the library committee, which is now usually a standing committee of the council. The committee, not the librarian, are answerable to the library authority in any case of defect or inefficiency (t). They function as a body and formulate and direct the policy of the library, the actual administration being left to the librarian, and they exercise a general supervision over the work of every branch of library activities, including the selection of books, and the control of the expenditure of the revenue allocated to library purposes. [142]

London.—Sect. 27 of the L.C.C. (General Powers) Act, 1934 (u), confers a general power on metropolitan borough councils to appoint committees and provides that any committee appointed for any of the purposes of the Public Libraries Acts, 1892 to 1919, may consist partly of persons who are not members of the borough council. The similar provision in sect. 8 (1) of the London Government Act, 1899 (a), is repealed together with sub-sect. (2) of that section. [143]

A metropolitan borough council may, under sect. 27 (4) of the Act of 1934, delegate with or without restrictions or conditions to any committee appointed under the section, any functions exercisable by the council, other than functions which are required to stand referred to another committee. The effect of sect. 28 (8) of the Act (b) is that a power of levying a rate or of borrowing money may not be delegated to a committee, and no committee must spend any money beyond such sum as may be allowed by the borough council. Under sub-sect. (4) of the section, a person who is disqualified for being elected or being a member of the borough council is disqualified for membership of a committee, but a co-opted member need not possess the affirmative qualification required for a borough councillor. The prohibition against

(r) (1908), 67 J. P. Jo. 304; 38 Digest 227, 555.

(s) "The librarian should be invited to attend all meetings of the public library committee, and to advise the committee, as their technical expert, on choice of books, arrangement of stock, services to educational bodies, staff and general policy" (Cmd. 2868, para. 124).

(t) The chairman is an important factor in the proper administration of a library service. He is the connecting link between the librarian and the committee and between the committee and the council. The conduct of library matters through the council should rest upon him and for this reason it is desirable that an elected member of the council be chosen chairman of the committee.

(u) 27 Halsbury's Statutes 416.

(a) 11 Halsbury's Statutes 1230.

(b) 27 Halsbury's Statutes 417.

voting on matters in which a member has a pecuniary interest is also applied to members of committees by sect. 28 (4) of the Act.

The provisions as to joint committees in sects. 91 to 97 of the L.G.A., 1933, apply to any metropolitan borough (c), so that where a library, etc., is maintained jointly by two or more boroughs a joint committee may be established, who may exercise such of the functions of a library authority as may be delegated to them, except the power of levying, or issuing a precept for, a rate, or of borrowing money (d). [144]

(c) L.G.A., 1933, s. 97; 26 Halsbury's Statutes 357.

(d) *Ibid.*, s. 91 (1); *Ibid.*, 355.

LICENCES, COMPENSATION FOR REDUNDANT

See COMPENSATION FOR REDUNDANT LICENCES.

LICENSED HOUSES, HOSPITALS AND CERTIFIED HOUSES

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See also titles : BOARD OF CONTROL;
MENTAL DISORDER AND MENTAL DEFICIENCY;
MENTAL HOSPITALS;
PERSONS OF UNSOUND MIND.

Definitions.—By sects. 4, 12—16 and 23 of the Lunacy Act, 1890 (a), as originally enacted, persons of unsound mind could be detained under a reception order in an institution for lunatics, and by sects. 1 and 5 of the Mental Treatment Act, 1930 (b), voluntary and temporary patients may be received without a reception order in certain institutions. Details of the procedure will be found in the title MENTAL DISORDER AND MENTAL DEFICIENCY. "Institution for lunatics" is defined in sect. 841 of the Act of 1890 (c) as meaning "an asylum, hospital or licensed house," and "asylum" is defined as "an asylum

(a) 11 Halsbury's Statutes 18, 23—25, 27.

(b) 26 Halsbury's Statutes 154, 157.

(c) 11 Halsbury's Statutes 130.

for lunatics provided by a county or borough or by a union of counties or boroughs." But by sect. 20 of the Act of 1930 (*d*), "asylum" is to be replaced by "mental hospital," and the definition of "institution" in that Act (*e*) is "a mental hospital and other premises maintained by a local authority for the purposes of the Act, a registered hospital or a licensed house." "Hospital," by sect. 341 of the Act of 1890 (*f*) means "any hospital or part of a hospital or other house or institution (not being an asylum) wherein lunatics are received and supported wholly or partly by voluntary contributions, or by any charitable bequest or gift, or by applying the excess of payments of some patients for or towards the support, provision or benefit of other patients." These hospitals will be referred to as "registered hospitals." Charitable institutions and institutions not conducted for profit are therefore alone covered. In renaming asylums as mental hospitals, the Mental Treatment Act, 1930, has introduced a risk of confusion between a hospital within the definition last set out and a mental hospital, but these two classes of institution are distinct.

"Licensed house" is not defined in sect. 341 of the Act of 1890, but the term is used to denote a private mental hospital conducted for profit. A "certified house" means a house certified by the Board of Control (*g*) for the reception of mental defectives under the Mental Deficiency Act, 1913. See *post*, p. 70. [145]

This title deals only with those hospitals or houses for the care of persons suffering from mental disease or who are mentally defective, which are not maintained by local authorities.

By sect. 16 of the Mental Deficiency Act, 1913 (*h*), transfers may be made with the consent of the Board of Control, from institutions for defectives to institutions for lunatics and *vice versa*. [146]

Licensed Houses.—Houses may be licensed as institutions for the care of mental patients either by the Board of Control in cases within their immediate jurisdiction (*i*), or by the justices of counties and quarter sessions boroughs for their areas (*k*). Persons detaining a lunatic in an unlicensed house are liable to a penalty of not exceeding £50 (*l*). Licensed houses are a diminishing class of institution, because by sect. 207 (*o*) of the Act of 1890 (*m*) no new licence may be granted, nor may the number of patients in a licensed house be increased, though the transfer of licences is allowed. But this policy does not extend to mental defectives, and new institutions and houses may be certified for the reception of defectives under sects. 36 and 49 of the Mental Deficiency Act, 1913 (*n*). Forms of licence under the Act of 1890 are prescribed in Sched. II. to the Act (*o*), and the mode of apply-

(*d*) 23 Halsbury's Statutes 171. "Lunatic" is to be replaced by "person of unsound mind" or "patient of unsound mind," and "pauper" by "rate-aided."

(*e*) S. 21; 23 Halsbury's Statutes 172.

(*f*) 11 Halsbury's Statutes 180.

(*g*) See s. 22 of the Mental Deficiency Act, 1913; 11 Halsbury's Statutes 174; s. 11 of the Mental Treatment Act, 1930; 23 Halsbury's Statutes 165, and the title BOARD OF CONTROL.

(*h*) 11 Halsbury's Statutes 171. See title MENTAL DEFECTIVES.

(*i*) The Board's jurisdiction extends to London and certain neighbouring places; see the list in Sched. III. to the Act of 1890; 11 Halsbury's Statutes 143.

(*k*) S. 208; 11 Halsbury's Statutes 91.

(*l*) S. 315; *ibid.*, 122. As to evidence, see s. 329 (2); *ibid.*, 126.

(*m*) 11 Halsbury's Statutes 91.

(*n*) *Ibid.*, 182, 187. See *post*, p. 70

(*o*) *Ibid.*, 141, 142.

ing for a licence by paras. 128, 129 of the Mental Treatment Rules, 1930 (*p*). The provisions of the Act of 1890 as to licensed houses will be found in sects. 207 to 229 of the Act (*q*). The Board of Control may make regulations for the government of any licensed house (*r*), and provisions as to the keeping of books and records and requiring certain notices to be given will be found in Part VIII. of the Mental Treatment Rules, 1930 (*s*). [147]

Registered Hospitals.—Provisions as to registered hospitals (defined *ante*, p. 68) for the reception of lunatics are contained in sects. 230 to 237 of the Lunacy Act, 1890 (*l*). Application must be made to the Board of Control (*u*), whose agreement is required to regulations framed by the managing committee of the hospital. These may be altered with the approval of the Board of Control (*u*). Every hospital must have a resident medical practitioner as superintendent (*a*), and a medical or other officer of the hospital or any person interested in a contract must not be a member of the managing committee (*b*). [148]

Visitors of Licensed Houses and Registered Hospitals.—The visitors of licensed houses are not the same bodies as the visiting committees of local authorities (*c*), but consist of three or more justices and one or more medical practitioners appointed by the justices of every county and quarter sessions borough for their area (*d*). The clerk of the peace or some other person appointed acts as clerk, and receives remuneration (*e*), as does the medical practitioner (*f*), and the expenses of the visitors are paid out of the county or borough fund under sect. 225 of the Act. Licensed houses within the immediate jurisdiction of the Board of Control are not visited by visitors appointed by the justices, but by commissioners or inspectors of the Board of Control (*g*). The duties of the visitors are set out in sects. 191 to 197 of the Act of 1890 (*h*). The persons appointed to be visitors to licensed houses, with the addition of one or more women are to be the visitors of institutions for defectives under the Mental Deficiency Act, 1913 (*i*). Registered hospitals are visited by the Board of Control only, under sect. 191 of the Act of 1890 (*k*), and their duties are set out in sects. 194 to 196 of the Act.

(*p*) 23 Halsbury's Statutes 206, 207.

(*q*) 11 Halsbury's Statutes 90—95.

(*r*) S. 226 of the Act of 1890; 11 Halsbury's Statutes 95; as in part repealed by s. 14 (2) of the Mental Treatment Act, 1930; 23 Halsbury's Statutes 168.

(*s*) 23 Halsbury's Statutes 193—200.

(*t*) 11 Halsbury's Statutes 90—98.

(*u*) S. 231; 11 Halsbury's Statutes 96, and s. 12 of the Lunacy Act, 1891; 11 Halsbury's Statutes 146. The M. of H. was made the controlling authority by S.R. & O., 1920, No. 809, but the duty was passed on to the Board of Control by Sched. II. to the Mental Treatment Act, 1930; 23 Halsbury's Statutes 175.

(*a*) S. 230; 11 Halsbury's Statutes 96.

(*b*) S. 236; *ibid.*, 98.

(*c*) As to the latter, see s. 28 of the Mental Deficiency Act, 1913; 11 Halsbury's Statutes 176; and s. 7 of the Mental Treatment Act, 1930; 23 Halsbury's Statutes 163.

(*d*) Act of 1890, s. 177; 11 Halsbury's Statutes 79. The visitors in boroughs may only be appointed with the consent of the Recorder. See s. 180.

(*e*) Ss. 178, 225; 11 Halsbury's Statutes 80, 94.

(*f*) Ss. 177 (12), 225; *ibid.*, 80, 94.

(*g*) S. 191; *ibid.*, 84, and Act of 1930, s. 13; 23 Halsbury's Statutes 107.

(*h*) 11 Halsbury's Statutes 84—86. As to temporary patients, see s. 5 (9) of the Act of 1890; 23 Halsbury's Statutes 159.

(*i*) S. 40; 11 Halsbury's Statutes 183.

(*k*) 11 Halsbury's Statutes 84.

If complaints are made by persons resident in the neighbourhood of a registered hospital of the behaviour of patients when outside the hospital, the Board of Control may inquire into the matter and make any order they think just (l). [149]

Powers and Duties of Local Authorities.—Local authorities, apart from maintaining institutions of their own for both paying and rate-aided patients, have power to contract with the managers of licensed houses and the committee of a registered hospital for the reception of rate-aided patients (m). The contract is made by the visiting committee of the local authority. It must not be for more than five years (n), and must be approved by the Board of Control who may determine it (o). While the contract subsists the local authority for whom the visiting committee acts must defray, out of the county or borough fund and in exoneration of the public assistance authority, so much of the weekly charge agreed upon for each rate-aided patient as in the opinion of the visiting committee represents the sum due for accommodation up to a limit of one-fourth of the entire weekly charge (p). The authority liable for maintenance may make an order, where a rate-aided patient is detained in a registered hospital or licensed house, for his removal to a workhouse or hospital, and of a patient in a mental hospital to some other institution (q). They may also make an order for his discharge unless his medical attendant certifies that he is dangerous or unfit to be at large, and two commissioners of the Board of Control may do the same (r). Where a patient becomes a pauper, the manager of the hospital or house may obtain an order from a justice for his removal to an institution named in the order, and the expenses are chargeable as expenses under the Act (s). Local authorities have power under sect. 6 of the Mental Treatment Act, 1930 (t), to contract for the reception and treatment of temporary patients in any registered hospital or licensed house, and by sect. 1 of that Act (u) all institutions may receive voluntary patients. Where a reception contract has been made, the hospital or licensed house may be visited by any members of the visiting committee (a). [150]

Certified Houses.—Under the Mental Deficiency Act, 1913, not only institutions (b) but also houses conducted for private profit may under sect. 49 of the Act (c) be certified by the Board of Control for the reception of mental defectives, subject to such conditions as they may impose and on payment of the prescribed fee. "Certified house," by sect. 71 of that Act (d), means a house in which defectives are received

(l) Lunacy Act, 1891, s. 21; 11 Halsbury's Statutes 148.

(m) Act of 1890, s. 269; 11 Halsbury's Statutes 108; Act of 1891, s. 17; 11 Halsbury's Statutes 147.

(n) S. 269 (3); 11 Halsbury's Statutes 108.

(o) S. 269 (5); *ibid.*, 108, as amended by Sched. II. to the Mental Treatment Act, 1930; 23 Halsbury's Statutes 175.

(p) Ss. 269 (9) and 286; 11 Halsbury's Statutes 108, 114. The county or county borough is now substituted for the poor law union.

(q) Act of 1890, ss. 61, 65; 11 Halsbury's Statutes 45.

(r) *Ibid.*, ss. 73-76; *ibid.*, 47, 48.

(s) Act of 1891, ss. 19, 22; *ibid.*, 147, 149; and Act of 1890, s. 286; *ibid.*, 114.

(t) 23 Halsbury's Statutes 161.

(u) *Ibid.*, 154.

(a) Act of 1890, s. 269 (10); 11 Halsbury's Statutes 108.

(b) S. 36; *ibid.*, 182.

(c) 11 Halsbury's Statutes 187.

(d) *Ibid.*, 195.

by the owner for his private profit, and in respect of which a certificate has been granted under the Act. These houses are in addition to and not in substitution for those previously provided under the Idiots Act, 1886 (*e*), and any house certified under that Act becomes a certified house under the Act of 1913.

By sect. 49 (2) of the Act of 1913 (*f*) all the provisions in that Act relating to institutions and the patients therein are to apply also to certified houses and the patients in them, and any defective may be ordered to be sent to or may be placed in a certified house who may under the Act be sent to or placed in an institution. By the proviso to sect. 49 (2), the certified house is, however, subject to the following provisions: (i.) no money provided by Parliament is to be applied towards the expenses of defectives in them, (ii.) a local authority has no power to contribute to the expenses of defectives sent there or to provide for their conveyance to, or reception and maintenance in the house, (iii.) the provisions of the Act as to the recovery from defectives or persons liable to maintain them of contributions towards the cost of their maintenance are not to apply to defectives in or ordered to be sent to certified houses, and (iv.) a special report as provided for in sect. 11 (4) (*h*) of the Act (*g*) as to the mental and bodily condition of a defective in such a house must not be made by the medical officer of the house or by any medical practitioner directly or indirectly interested in the house.

For defectives who are not ordered to be sent to an institution by the judicial authority, or a court, or a Secretary of State under the Act of 1913, sect. 50 of the Act (*h*) provides that premises or houses may be "approved homes" for their reception under the Act, if they are approved by the Board when satisfied of their fitness, and on payment of such fee, if any, as the Board think fit. [151]

London.—In London, the L.C.C. and the Common Council of the City are the local authorities for the purposes of the Lunacy Act, 1890 (*i*), but the L.C.C. are the sole local authority for the purposes of the Mental Deficiency Act, 1913 (*k*).

The whole of London is within the immediate jurisdiction of the Board of Control. Consequently visitors of licensed houses are not appointed by the justices. See *ante*, p. 69. [152]

(*e*) Act of 1913, s. 67 (2); 11 Halsbury's Statutes 104. The Idiots Act, 1886, was repealed by s. 67 (1) of the Act of 1913.

(*f*) 11 Halsbury's Statutes 188.

(*g*) *Ibid.*, 109.

(*h*) *Ibid.*, 188.

(*i*) Act of 1890, s. 240, and Fourth Schedule; 11 Halsbury's Statutes 99, 144.

(*k*) Act of 1913, n. 27; *ibid.*, 176.

LICENSING

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See also title : LOCAL TAXATION LICENCES, and titles referred to in text.

Under various statutes a number of licences are granted by the local authorities, either under original legislation or by transfer under the various Local Government Acts. The following is a list of these licences, and further particulars will be found under the heading of this work relating to the appropriate subject-matter. [153]

LICENCES BY COUNTY COUNCILS AND COUNTY BOROUGH COUNCILS

Cinemas, under the Cinematograph Act, 1909 (*a*). See title CINEMATOGRAPHS. [154]

Explosives, under the Explosives Act, 1875 (*b*), relating to factories, stores and sales of all kinds of explosives. See title EXPLOSIVES. [155]

Motor Car Licences.—See MOTOR LICENCES.

Public Music and Dancing.—In any district where Part IV. of the P.H.A. Amendment Act, 1890 (*c*), has been adopted, these licences are granted by the justices for the local petty sessional division. Part IV. has been somewhat widely adopted, but does not apply within twenty miles of the cities of London or Westminster (see sect. 51 (12)). Within that area, by virtue of other Acts, the county and county borough councils are the licensing authorities (*d*). See title MUSIC, SINGING AND DANCING. [156]

(*a*) 19 Halsbury's Statutes 852.

(*b*) 8 Halsbury's Statutes 385.

(*c*) 13 Halsbury's Statutes 843.

(*d*) Music and Dancing Licences (Middlesex) Act, 1894 ; 19 Halsbury's Statutes 349, Home Counties (Music and Dancing) Licensing Act, 1926 ; 19 Halsbury's Statutes 363, Disorderly Houses Act, 1751 ; 4 Halsbury's Statutes 359, as amended by Public Entertainments Act, 1875 ; 4 Halsbury's Statutes 681, and L.G.A., 1888, ss. 3, 34 ; 10 Halsbury's Statutes 688, 711.

LICENCES BY BOROUGH AND DISTRICT COUNCILS

Calcium Carbide.—Under the Petroleum (Consolidation) Act, 1928 (*e*), as extended by an order of the Home Secretary dated November 5, 1929 (*f*), the licence of the borough or district council is required for storing calcium carbide in any quantity greater than 28 lb. See titles CARBIDE OF CALCIUM and PETROLEUM. [157]

Game Dealers.—Under sect. 18 of the Game Act, 1831 (*g*), which was passed for the prevention of poaching, licences to deal in game were granted by the justices in special sessions. This power was transferred to the borough and district councils by sects. 27, 32 of the L.G.A., 1894 (*h*). There is no appeal against a refusal of a licence. The council's licence must be combined with a revenue licence. See title GAME DEALERS. [158]

Gangmasters.—Under sect. 5 of the Agricultural Gangs Act, 1867 (*i*), a licence is required for any person who hires children, young persons or women, with a view to their employment in agricultural labour on lands not in his own occupation. This power of licensing was also transferred to the councils of boroughs and districts by sects. 27, 32 of the L.G.A., 1894 (*h*). In consequence of modern transport facilities the gangs of workers for which these licences were required are now comparatively rare. See also title AGRICULTURAL GANGS. [159]

Hackney Carriages.—A borough or U.D.C. may license hackney carriages to ply for hire within the borough or district, or within five miles of their general post office. The licences relate to cabs, etc. but not to public service vehicles such as motor buses, which are under the control of the traffic commissioners appointed under the Road Traffic Act, 1930, for regional areas (*k*). Formerly a fee was chargeable on each licence, but this was abolished, as regards mechanically propelled vehicles, by sect. 14 of the Roads Act, 1920 (*l*). A separate licence, in addition to that for the carriage or cab, is required for the driver. Both licences are annual, and a driver's licence may be suspended for misconduct. See P.H.A., 1875, sect. 171 (*m*) and Town Police Clauses Act, 1847, sects. 37–68 (*n*). These provisions do not extend to rural districts, but may be applied to a rural district or contributory place by an order of the M. of H. under sect. 276 of the P.H.A., 1875 (*o*). See title HACKNEY CARRIAGES AND OMNIBUSES. [160]

Horses, Ponies, etc., for pleasure. Borough and district councils may license the drivers of horses, ponies, mules and donkeys standing for hire, and make bye-laws as to conduct of drivers. See sect. 172 of the P.H.A., 1875 (*p*), and see title HORSES, PONIES, MULES OR ASSES. [161]

Intoxicating Liquors.—Although borough and urban district councils have no control over the grant of liquor licences, they must be informed

(*e*) 13 Halsbury's Statutes 1170.

(*f*) S.R. & O., 1929, No. 902.

(*g*) 10 Halsbury's Statutes 797, 798.

(*h*) 23 Halsbury's Statutes 656.

(*i*) 13 Halsbury's Statutes 696.

(*j*) 13 Halsbury's Statutes 741.

(*k*) *Ibid.*, 697, as extended to rural districts by the Rural District Councils (Urban Powers) Order, 1931; 24 Halsbury's Statutes 262 (S.R. & O., 1931, No. 580).

(*g*) 8 Halsbury's Statutes 1074.

(*h*) 1 Halsbury's Statutes 58.

(*i*) 19 Halsbury's Statutes 98.

(*n*) 19 Halsbury's Statutes 43–53.

of any applications for new licencees, or for the transfer of an existing licence. This right arises on account of their position as successors to the overseers of the poor, who were abolished by sect. 62 of the R. & V.A., 1925 (*g*), and whose duties were distributed by the Overseers Order, 1927. The combined effect of sects. 15, 25 (3) of the Licensing (Consolidation) Act, 1910 (*r*), and Art. 14 of the Overseers Order, 1927 (*s*), is that notice of the application must be served in a borough or urban district on the clerk of the rating authority, in a rural parish having a parish council on the chairman of the council, or in a rural parish having no council on the chairman of the parish meeting. If the notice is sent by post under sect. 108 of the Act of 1910 (*t*), it must be so sent by a registered letter. The rating authority, council or parish meeting would no doubt have an implied authority to oppose the application, though this is nowhere expressly given. See also title INTOXICATING LIQUORS. [162]

Knackers' Yards.—In order to prevent the stealing of horses and cattle, the Knackers Acts were passed in 1786 and 1844 (*u*) requiring all persons who kept houses for slaughtering horses and cattle (otherwise than for butchers' meat) to be licensed by the local justices. This power was transferred to borough and district councils by sect. 27 (2) of the L.G.A., 1894 (*a*). A knacker's yard may also be licensed by a borough or district council under sect. 125 of the Towns Improvement Clauses Act, 1847 (*b*), as applied by sect. 169 of the P.H.A., 1875, and S.R. & O., 1924, No. 1431; see definition of "slaughter-house" in sect. 4 of that Act (*c*), and SLAUGHTER-HOUSES AND KNACKERS' YARDS. [163]

Omnibuses.—The licensing of those omnibuses, which are not public service vehicles mechanically propelled, and of their drivers and conductors, is also required by sect. 4 of the Town Police Clauses Act, 1880 (*d*), which applied to omnibuses the provisions of the Town Police Clauses Act, 1847, referred to under the head of Hackney Carriages, but was repealed as to mechanically propelled public service vehicles by sect. 122 of the Road Traffic Act, 1930 (*e*). See title HACKNEY CARRIAGES AND OMNIBUSES. [164]

Passage Brokers and Emigrant Runners.—Licences to persons carrying on these occupations are required by sects. 342, 348 of the Merchant Shipping Act, 1894 (*f*), and the power to grant them is vested by sect. 343 in borough and district councils. See title EMIGRANT RUNNERS AND PASSAGE BROKERS. [165]

Pawnbrokers.—Under sect. 40 of the Pawnbrokers Act, 1872 (*g*), certificates for pawnbrokers were granted by the justices. This function was transferred to borough and district councils by sect. 27 of the L.G.A., 1894 (*a*). A certificate can only be refused on the ground that the applicant cannot produce satisfactory evidence of good character, or because his shop is frequented by thieves or persons of bad character, or that he has failed to comply with the requirements of

(*g*) 14 Halsbury's Statutes 682.

(*r*) 9 Halsbury's Statutes 995, 1004.

(*s*) 14 Halsbury's Statutes 775 and S.R. & O., 1927, No. 55.

(*t*) 9 Halsbury's Statutes 1041.

(*u*) 13 Halsbury's Statutes 507, 517.

(*a*) 10 Halsbury's Statutes 797.

(*b*) 13 Halsbury's Statutes 572.

(*c*) *Ibid.*, 626, 696.

(*d*) 19 Halsbury's Statutes 62.

(*e*) 23 Halsbury's Statutes 687.

(*f*) 18 Halsbury's Statutes 289, 291.

(*g*) 12 Halsbury's Statutes 701.

the Pawnbrokers Act, 1872, as to notices—see sect. 43 of the Act of 1872 (*h*). See title PAWNBROKERS. [166]

Petroleum Storage.—Under sect. 1 of the Petroleum (Consolidation) Act, 1928 (*i*), petroleum spirit of a flash-point of less than 73 degrees Fahr. may not be stored in quantities exceeding three gallons, except under a licence from the council of the borough or district or the harbour authority. This law does not apply to the more refined and less explosive oils used for lighting only. See title PETROLEUM. [167]

Pleasure Boats, etc.—A borough or district council may license the proprietors of pleasure boats, pleasure vessels and their boatmen. In addition they may make bye-laws for regulating the manning of boats, numbers to be carried, rates of hiring and qualifications of boatmen. See sect. 172 of the P.H.A., 1875 (*k*), and title PLEASURE BOATS. [168]

Slaughter-houses.—Most larger boroughs have provided public slaughter-houses and many have arranged for the abolition of private ones under a local Act. In smaller towns private slaughter-houses still exist. Those which were established before sects. 125—131 of the Towns Improvement Clauses Act, 1847 (*l*), were applied to the area are merely registered. Any private slaughter-house opened since that date (sect. 126) requires a licence from the council, who may make bye-laws for the regulation of slaughter-houses. An infringement of bye-laws may be punished by the justices not only with a fine, but with a suspension of the licence (sect. 129). Special provisions as to licensing contained in sects. 29 to 31 of the P.H.A. Amendment Act, 1890 (*m*), apply in a borough or urban district if Part III. of that Act has been adopted by the council. See title SLAUGHTER-HOUSES AND KNACKERS' YARDS. [169]

Stage Plays.—See title STAGE PLAYS, LICENSING OF.

Steam Whistles.—Under the Steam Whistles Act, 1872 (*n*), steam whistles for summoning or dismissing workmen in any manufactory or any other place in a borough or district must be sanctioned by the council. Such sanction may be revoked on a complaint. There is also an appeal to the M. of H. This sanction is not nominally a licence, but is so closely related to licences that it may properly be mentioned here. See title STEAM WHISTLES. [170]

Theatres.—See title THEATRES, LICENSING OF.

London.—Apart from licences issued under public general statutes which are applicable to the whole country, the undermentioned licences are issued by the authorities indicated.

By the L.C.C. :

Premises for public boxing ; L.C.C. (General Powers) Acts, 1930, Part III. ; 1935, Part VI. (*o*).

Premises for public music and dancing ; Disorderly Houses Act, 1751 ; L.C.C. (General Powers) Acts, 1915, Part III. ; 1923, sect. 16 ; 1935, Part VI. (*p*).

(*h*) 12 Halsbury's Statutes 702.

(*i*) 13 Halsbury's Statutes 1170.

(*k*) *Ibid.*, 697, as extended to rural districts by the Rural District Councils (Urban Powers) Order, 1931 ; 24 Halsbury's Statutes 262 (S.R. & O., 1931, No. 530).

(*l*) 13 Halsbury's Statutes 572—4.

(*m*) *Ibid.*, 836, extended to rural districts by S.R. & O., 1924, No. 1481.

(*n*) 8 Halsbury's Statutes 498.

(*o*) 23 Halsbury's Statutes 749 ; 28 *ibid.*, 157.

(*p*) 4 Halsbury's Statutes 359 ; 19 *ibid.*, 356, 357 ; 28 *ibid.*, 157.

By the L.C.C. and the Common Council of the City :

Employment Agencies ; L.C.C. (General Powers) Act, 1921, Part III. ; L.C.C. (General Powers) Act, 1926, sect. 40 (*g*).

Massage Establishments ; L.C.C. (General Powers) Act, 1920, Part IV. ; L.C.C. (General Powers) Act, 1926, sect. 40 (*r*). [171]

By Metropolitan Borough Councils :

Cow-houses and slaughter-houses ; P.H. (London) Act, 1936, sect. 144.

Knackers' yards and slaughter-houses for horses ; P.H. (London) Act, 1936, sects. 143—145.

Offensive Trades (Sanction to establish) ; P.H. (London) Act, 1936, sects. 140—142.

Settling up of temporary wooden structures ; London Building Act, 1930, sect. 91 (*s*).

Street trading ; L.C.C. (General Powers) Act, 1927, Part VI. (*t*). [172]

By the Police :

Shoeblocks, messengers and commissionaires ; Metropolitan Streets Act, 1867, sect. 19 (*u*).

Hackney carriages and stage carriages ; Drivers and vehicles ; London Hackney Carriages Acts, 1843 and 1850 ; Metropolitan Public Carriage Act, 1869 (*a*). [173]

(*g*) 11 Halsbury's Statutes 1347, 1383.

(*r*) *Ibid.*, 1337, 1383.

(*s*) 23 Halsbury's Statutes 266.

(*u*) 19 Halsbury's Statutes 161.

(*t*) 11 Halsbury's Statutes 1386.

(*a*) *Ibid.*, 125, 142, 163.

LICENSING APPEALS

See INTOXICATING LIQUORS.

LICENSING JUSTICES

See INTOXICATING LIQUORS.

LIENS

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See also title : Costs.

General.—A lien is a common law right which a person has to retain in his possession property belonging to someone else until certain demands are satisfied (*a*). A lien may also arise from an express contract, and is dealt with in two statutes mentioned later. In one case it was said (*b*) to be the simplest form of security, in distinction from a mortgage which passes the property, and a pledge, where by contract a deposit of goods is made as security for a debt, and the right to the property vests in the pledgee, so far as it is necessary to secure the debt. There can be no lien without possession (*c*), and the possession must be rightful and continuous (*d*). A lien is a mere right to detain the article and it cannot be sold (*e*). As a sheriff can seize only those things which he can sell, an article on which there is a lien cannot be taken in execution (*e*). It is distinguishable also from the right in goods let out on hire, where the person hiring them has absolute use (*f*) and an interest which may be disposed of. In general a lien is not affected by the Statute of Limitations (*g*). [174]

A general lien entitles the person in possession to retain chattels until all claims against the owner are settled, and such liens have been established in the case of solicitors (*h*), bankers, factors, stock-brokers, warehouse-keepers and insurance brokers (*i*), but usually a lien is allowed in regard to charges incurred or money spent in respect of particular goods or in particular trades. There is a lien for the charges for work done in which skill is used, such as that of accountants, architects, conveyancers, engineers (*k*). If a perishable article is retained, the person in possession must take reasonable care of it (*l*), but he cannot add to the amount of the lien a charge for keeping it (*m*).

[175]

(*a*) *Hammonds v. Barclay* (1802), 2 East, 227; 32 Digest 216, 4.

(*b*) *Halliday v. Holgate* (1868), L. R. 3 Ex. 299; 32 Digest 217, 23.

(*c*) *Shaw v. Neale* (1858), 6 H. L. Cas. 581; 32 Digest 218, 35.

(*d*) *Lempriere v. Pasley* (1788), 2 Term Rep. 485; 32 Digest 219, 38.

(*e*) *Legg v. Evans* (1840), 6 M. & W. 36; 32 Digest 216, 12.

(*f*) *Ibid.*, at p. 42.

(*g*) *Spears v. Hartly* (1800), 3 Esp. 81; 32 Digest 238, 224.

(*h*) See post, p. 78.

(*i*) See Halsbury's Laws of England (2nd ed.), Vol. 20, p. 558.

(*k*) See list, *Ibid.*, pp. 565, 566.

(*l*) *Great Western Railway v. Crouch* (1858), 3 H. & N. 188; 8 Digest 35, 197.

(*m*) *Somes v. British Empire Shipping Co.* (1860), 8 H. L. Cas. 338; 32 Digest 253, 390.

A solicitor not only has a common law right to retain property in his possession till he has been paid the costs due to him in his professional character, but he also has a statutory right (*n*) to ask the court to make a charging order on property recovered or preserved through his instrumentality. No order may be made, however, if the right to recover the costs is barred by any statute of limitations. A solicitor's lien covers all deeds, bills of exchange, letters patent and other papers, and money, but the latter only up to the amount actually due. If, however, the documents are delivered or the money paid to the solicitor as a trustee, he has no lien over them (*o*), and he has no lien over a will or the original records of a court. The lien covers only costs due in respect of work done on the instructions of the client and for work done in his professional character. Documents delivered to him by a third party are subject to the lien, if the delivery is with the consent of the client. There may be difficulties where one solicitor is acting for both a mortgagor and a mortgagee, but the general rule appears to be that the lien is against the mortgagor till the conveyance is completed, when it arises against the mortgagee. While the solicitor holds the documents, the client has no right of inspection, but the solicitor must produce them for the benefit of a third party. If a solicitor relinquishes his employment, the client and his new solicitor are entitled to a summary order for inspection or to hold the documents for a time and redeliver them, but if the solicitor is discharged by his client he may retain them until his costs are paid (*p*). A solicitor discharges his lien if he takes security on other property, or relinquishes possession, or proves the debt in bankruptcy proceedings, or abandons it, but it is his duty to inform the client of his rights. A solicitor may assign his costs, with the benefit of the lien. [176]

Extinguishment.—A lien on goods is lost in the following ways (*q*): (i.) by parting with the goods (*r*), though this does not occur when possession is lost through the wrongful act of a third party (*s*); (ii.) by payment or tender of the amount claimed (*t*); (iii.) where a claim is made for retention but no mention of lien is made (*u*); and (iv.) by use of the goods in a way inconsistent with the claim, such as by selling them, or by treating them as non-existent (*a*). [177]

Enforcement.—There is no method for enforcing a lien unless it is made under contract—a lien is merely a right to detain goods until payment, and if the person in possession sells them, an action for trover lies against him. A lien, when rightfully established, is, however, a defence to an action for conversion, and where a lien is given by statute, or is an equitable lien (see later), the possessor may obtain an order for sale from the court. By sect. 56 (1) (b) of the Supreme Court of Judicature (Consolidation) Act, 1925 (*b*), the sale and distribution of the

(*n*) Solicitors Act, 1932, s. 69; 25 Halsbury's Statutes 880. See Cordery's Law Relating to Solicitors, 1935, pp. 455—499; and 42 Digest, pp. 259—308.

(*o*) See *Clayton v. Clayton*, [1930] 2 Ch. 12; Digest Supp.

(*p*) With some exceptions. See Cordery on Solicitors, 4th ed., at p. 468.

(*q*) For goods under the Sale of Goods Act, 1893, see s. 43 of that Act; 17 Halsbury's Statutes 634.

(*r*) *Cruger v. Wilcox* (1755), 1 Dick. 269; 32 Digest 229, 143.

(*s*) *Re Carter, Carter v. Carter* (1885), 55 L. J. Ch. 230; 32 Digest 231, 166.

(*t*) *Cawnce v. Spanton* (1844), 7 M. & G. 903; 32 Digest 232, 173.

(*u*) *Boardman v. Sill* (1808), 1 Camp. 410, n.; 32 Digest 234, 185.

(*a*) *Mulliner v. Florence* (1878), 3 Q. B. D. 484; 32 Digest 234, 193.

(*b*) 13 Halsbury's Statutes 210.

proceeds of property subject to any lien or charge is assigned to the Chancery Division of the High Court, and, if the lien does not exceed £500, to the county court (c). Where an action is brought to recover property other than land, and the defendant claims a lien, the court may order that the plaintiff shall pay into court the amount of the lien and any further sum directed for interest, and the property must be given up on such a payment into court (d). Where a lien was claimed by a solicitor in respect of his costs, it was held (e) that the court had jurisdiction, upon payment into court or giving security for the amount claimed, to order before taxation delivery up of the client's papers, if detention would embarrass the client in the prosecution or defence of pending actions. [178]

Liens in Relation to Local Authorities.—A local authority, as a corporate body, has the rights and privileges already referred to in connection with liens. A local authority, therefore, might have a lien on goods left with them as common carriers, and other persons might have a lien against the authority for goods bought and not paid for. An equitable lien might be established against them, also, as vendor or purchaser of land. The chief interest, however, of a local authority in liens arises in regard to legal actions and the lien of a solicitor. In *R. v. Sankey* (f) it was held in 1836 that a town clerk has a lien on the papers of a borough council for whom he had done work as attorney or solicitor, but not on such papers as he held only as town clerk, where he is also a solicitor in private practice. At the present time, provisions are often included in the contract of service to guard against possible difficulties in regard to the custody of documents. Apart from the town clerk, a solicitor employed by a local authority would be in the same position as regards his lien on papers and documents as one employed by any other client. According to early cases it might happen that where no mention had been made in the contract, an architect or surveyor employed by an authority might keep any plans in his possession for work done upon them, if there was a difficulty as regards payment, or the draftsman of a local Act might keep the documents entrusted to him as draftsman. [179]

(c) County Courts Act, 1934, s. 82 (c); 27 Halsbury's Statutes 115.

(d) Rules of the Supreme Court, Order 50, r. 8, and County Court Rules, Order 12, r. 7.

(e) *In re Galland* (1885), 31 Ch. D. 296.

(f) (1836), 5 Ad. & El. 423; 32 Digest 252, 377.

LIGHT RAILWAYS

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See also titles : DERATING ;
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[The Light Railways Act, 1896; 14 Halsbury's Statutes 252 *et seq.*; the Light Railways Act, 1912; 14 Halsbury's Statutes 314 *et seq.*; and the Railways Act, 1921; 14 Halsbury's Statutes 816 *et seq.*, will be referred to below as "the Act of 1896," "the Act of 1912," and "the Act of 1921" respectively and no further references to Halsbury's Statutes of England will be given. The Act of 1912 and Part V. of the Act of 1921 are to be read and construed as one with the Act of 1896 (see sect. 11 of the Act of 1912 and sect. 74 of the Act of 1921).]

Introduction.—Light railways are railways constructed to carry traffic that is restricted, in regard to weight and speed, to limits below those in force upon the general railway system (*a*). In consequence of this restriction, the construction, equipment and working of such railways can be carried out less expensively than in the case of railways intended for normal traffic.

A special procedure for the authorisation of light railways was provided by the Act of 1896 as developed and altered by the Act of 1912 and the Act of 1921. The authorisation was originally by an order of the Light Railway Commissioners confirmed by the Board of Trade, and an order so made and confirmed had effect as if enacted by Parliament. The powers of the Board of Trade in respect of light railways were transferred to the Minister of Transport by sect. 2 of the M. of T. Act, 1919 (*b*); and by sect. 68 (1) of the Act of 1921, the powers of the Light Railway Commissioners were transferred to the Minister,

(*a*) The term "light railway" is merely descriptive. There is no definition of a light railway in the Act of 1896 or 1912, but in s. 28 of the Act of 1896 "Light Railway Company" is defined as including "any person or body of persons . . . who are authorised to construct, or are owners or lessees of any light railway authorised by this Act or who are working the same under any working agreement."

(*b*) 8 Halsbury's Statutes 422.

and it was enacted that orders under the Act of 1896 should be made by the Minister instead of being made by the Light Railway Commissioners and confirmed by the Minister. If the Minister is of opinion that for special reasons the proposals ought to be submitted to Parliament, he may make the order under sect. 68 (2) as a provisional order requiring a confirming Act of Parliament. [180]

The undertakings that may be authorised under this procedure include not only railways in the sense in which that term is ordinarily used, but also railways used mainly for the conveyance of passengers on lines laid in the public road, which are indistinguishable from tramways.

In 1935 there were 615 miles of light railways of the railway type open for traffic, and 170 miles of light railways of the tramway type. The types are denominated as Class A (railway type) and Class B (tramway type) respectively. [181]

During the years 1933 to 1935, only three light railway schemes seem to have been authorised. No doubt new schemes for trolley vehicle services are superseding action under the Light Railway Acts.

The legislation as to light railway orders consists of the Acts of 1896 and 1912, and Part V. of the Act of 1921. The Acts of 1896 and 1912 are to have effect as if for references to the Light Railway Commissioners there were substituted references to the M. of T., and for references to the confirmation of orders by the Minister, there were substituted references to the making of orders by the Minister (c). [182]

Railways Authorised as Normal Railways.—By sects. 27—29 of the Regulation of Railways Act, 1868 (d), the Board of Trade were allowed to license a company, already empowered to construct or work a railway, to do so as a light railway. Axle-weight was limited by sect. 28 to eight tons per pair of wheels and maximum speed to twenty-five miles an hour. By sect. 18 of the Act of 1896, the Minister of Transport may by order authorise such a company to construct or work the railway or any part of it as a light railway under the Act. No limitation is imposed by this section as to weight or speed. [183]

Authorisation by Order.—An application for an order authorising a light railway may be made to the M. of T. (i.) by the council of any county, borough or district through any part of which the proposed railway is to pass (as to the expenses of such an application, see *post*, p. 85); or (ii.) by any individual, corporation or company; or (iii.) jointly by any of these bodies or persons (e).

The nature of the provisions which may be contained in an order are set out in sect. 11 of the Act of 1896, as amended by sect. 5 (3) of the Act of 1912 and by sects. 71 (3), 73 of the Act of 1921. [184]

The incorporation with the order of various Clauses Acts and the application of general railway enactments are provided for in paras. (a) and (b) of sect. 11, and are dealt with later in this title (ee). Other provisions which may, under sect. 11 as amended by sect. 5 (3) of the Act of 1912 and sect. 73 (1) of the Act of 1921, be included in the order are as follows:

- (1) power to construct and work the light railway and incidental works and to make agreements for the purpose with any company, authority, person or body;

(c) Act of 1921, s. 68 (1).

(e) Act of 1896, s. 2.

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(d) 14 Halsbury's Statutes 183, 184.

(ee) *Post*, pp. 82, 83.

- (2) powers required for carrying the order into effect ;
- (3) the incorporation of a company to carry out the order, and the representation on the managing body of any council advancing money or guaranteeing interest and dividends ;
- (4) authorising a council to advance or borrow money, or guarantee interest or dividends ;
- (5) the division of profits where a council advance money as part of share capital of a company or guarantee dividends ;
- (6) the audit of accounts ; the time for construction of the railway ;
- (7) fixing maximum rates and charges for traffic ;
- (8) fixing the deposit to be made by a new company ;
- (9) empowering a local authority to acquire the railway ; or empowering a railway company to acquire a railway, where it is not in the nature of a tramway ;
- (10) any other ancillary or expedient matter. [185]

Application of Clauses Acts. Acquisition of Land.—The Clauses Acts, as defined in sect. 28 of the Act of 1896, do not apply to a light railway authorised under that Act except in so far as they are incorporated or applied by the authorising order (*f*). These Acts are the Lands Clauses Acts, the Railways Clauses Consolidation Act, 1845, and the Railway Clauses Act, 1863, and the Companies Clauses Consolidation Acts, 1845 to 1889.

An order authorising a light railway may incorporate all or any of the provisions of these Acts, subject to such exceptions and variations as may be mentioned in the order, but where variations of the Lands Clauses Acts are required by the special circumstances of the case, the Minister must make a special report to Parliament on the subject. The order may not vary the provisions of the Lands Clauses Acts with respect to the compulsory purchase and taking of land ; but under sect. 4 of the Act of 1912, sect. 92 of the Lands Clauses Consolidation Act, 1845 (*g*), may be varied by the order so as to provide for the taking of part only of a house, building or manufactory which can be severed without material detriment to the remainder ; and by sect. 60 of the Act of 1921, the order may incorporate the Lands Clauses Acts subject to any modification made or authorised to be made by the Development and Road Improvement Funds Act, 1909 (*h*). The principal modifications authorised by the last-mentioned Act are that compensation is to be determined by a single arbitrator, who may determine costs and disallow unnecessary witnesses ; that no allowance may be made for compulsory purchase ; that regard is to be had to betterment ; and that the provisions as to the sale of superfluous lands are not to apply (*h*). For the purposes of Clauses Acts incorporated or applied by the order, the light railway company is deemed to be a railway company, the order a special Act, and any provision thereof a special enactment (*i*). [186]

A light railway order may authorise the payment to trustees of compensation money for lands taken up to £500 (*k*), thus extending

(*f*) Act of 1896, s. 12 (1).

(*g*) 2 Halsbury's Statutes 1145.

(*h*) See schedule to the Act of 1909 ; 9 Halsbury's Statutes 217.

(*i*) Act of 1896, s. 12 (2).

(*k*) *Ibid.*, s. 14.

the amount so payable (in cases of lunatics, infants, etc.) under sect. 71 of the Lands Clauses Consolidation Act, 1845 (*l*).

Any person with power by statute or otherwise to sell and convey land may do so at a price less than its real value, or even without payment, with the consent of the Minister of Agriculture, who must be satisfied that other land of the owner will be equivalently improved in value. With the same sanction, contributions for the purpose of the works of a light railway may be charged on the land improved (*m*). The Commissioners of Crown Lands are given power to convey Crown lands, with the sanction of the Treasury (*n*). [187]

No common (including a town or village green) may be taken without the consent of the Minister of Agriculture, who must be satisfied that certain conditions are fulfilled (*o*).

As to injury to buildings or objects of historical interest or to natural scenery, see *post*, p. 85. [188]

Application of General Railway Legislation.—Save as mentioned below and subject to any special provision contained in the order, the general enactments relating to railways apply to a light railway as they apply to any other railway; and for the purposes of these enactments the light railway company is deemed to be a railway company, and the order a special Act, and any provision thereof a special enactment (*p*). The order is an Act of Parliament for the purpose of the Telegraph Act, 1878 (*q*).

The Second Schedule to the Act of 1896 contains a list of general railway enactments relating to safety, etc., which do not apply to light railways unless incorporated or applied by the order (*r*). [189]

Amendment of Order.—An order may be altered or added to by an amending order made in like manner and subject to the like provisions as the original order, on the application of any authority or person (*s*).

An amending order may not confer any power to acquire the railway without the consent of the owners (*s*); save that where the light railway is not of the nature of a tramway (that is to say, is not laid wholly or mainly along a public carriageway, and used wholly or mainly for the carriage of passengers) an amending order may authorise a railway company to acquire the light railway without the consent of the owners (*t*). [190]

Where a light railway is constructed on public roads, and the authorising order empowers any local authority to acquire it, an amending order applied for by any local or road authority in whose area part of the railway is situated may determine or vary the authorities by whom the railway may be acquired, and may provide for its maintenance and working; but may not alter the period within

(*l*) 2 Halsbury's Statutes 1136.

(*n*) *Ibid.*, s. 20.

(*p*) *Ibid.*, s. 12 (2).

(*r*) The excepted enactments are: Highway (Railway Crossings) Act, 1839; ss. 9 and 10 of the Railway Regulation Act, 1842; Railway Regulation (Gauge) Act, 1846; ss. 10, 20, 22, 27—29 of the Regulation of Railways Act, 1868; ss. 4, 6 of the Railway Regulation Act (Returns, etc.), 1873; Railway Returns (Continuous Brakes) Act, 1878; s. 3 of the Cheap Trains Act, 1883; Regulation of Railways Act, 1889. Ss. 4—6 of the Railway Regulation Act, 1842, and s. 5 of the Regulation of Railways Act, 1871, also excepted, were repealed by the Road and Rail Traffic Act, 1933.

(*s*) Act of 1896, s. 24.

(*t*) Act of 1921, s. 73 (2) and (3).

(*m*) Act of 1896, s. 19.

(*o*) *Ibid.*, s. 21.

(*q*) *Ibid.*, s. 25.

which the railway is to be acquired, or the basis on which the purchase money is to be assessed, without the consent of the owners of the railway (u). [191]

Arbitrations.—Any matter which may, under the Lands Clauses Acts as incorporated in an order, be determined by a jury, by arbitration, or by two justices, is to be determined by a single arbitrator appointed by the parties, or, on disagreement, by the Board of Trade (a); and the arbitrator is to have regard to benefit of remaining lands. The Board of Trade may fix a scale of costs, and limit the cases where the costs of counsel are to be allowed (b). The Arbitration Acts are to apply (c).

By sect. 9 of the Act of 1912 as in part repealed by the Ninth Schedule to the Act of 1921, any matter which under the order is to be determined by arbitration is, subject to the special provisions of the order, to be determined by the Minister of Transport, or, if he thinks fit, by a single arbitrator appointed by him, and the Board of Trade Arbitrations, etc., Act, 1874, and the Arbitration Acts (d) are to apply. [192]

Advances by Minister of Transport.—The Minister may, with the sanction of the Treasury, advance Government funds under sect. 17 of the M. of T. Act, 1919 (e), for the construction of light railways; and where the Minister agrees under that section to advance money for the purposes of a light railway to be authorised by order under the Light Railways Acts, the order may make provision limiting, for a period not exceeding ten years, the assessment to local rates of the railway to a value not greater than the value at which the land acquired would have been assessed before its acquisition (f). [193]

Winding up of Company.—The Minister, on the application of a company incorporated by order under the Light Railways Acts, may by order declare that the company shall be wound up (g). [194]

Procedure on Application for Order.—The procedure upon an application for a light railway order is prescribed by sects. 7, 9 of the Act of 1896 as amended by sect. 68 of the Act of 1921. The rules made by the Minister as to notices and advertisements, deposit of plans, etc., nature of plans, book of reference and sections required, form of estimates, and documents to accompany an application are contained in the M. of T. (Light Railways Procedure) Rules, 1927 (h).

The Minister must satisfy himself that all reasonable steps have been taken for consulting the local authorities, including road authorities, through whose area the railway is intended to pass, and the

(u) Act of 1912, s. 6.

(a) Act of 1896, s. 13. The powers of the Board under s. 13 were excepted from transfer to the M. of T. See S.R. & O., 1919, No. 1440.

(b) See the Light Railways (Costs) Rules, 1898; S.R. & O., 1898, No. 496.

(c) Act of 1896, s. 13. This section only affects the amount of compensation to be awarded. The procedure under the Lands Clauses Acts remains; *R. v. Barton and Immingham Light Rail. Co.*, [1912] 3 K. B. 72; 11 Digest 195, 759.

(d) 14 Halsbury's Statutes 210; 1 Halsbury's Statutes 453; 27 Halsbury's Statutes 27.

(e) 3 Halsbury's Statutes 435.

(f) Act of 1921, s. 70 (1); Act of 1896, s. 5 (1) (c). The remainder of ss. 4 to 6 of the Act of 1896 is repealed by s. 70 (2) of the Act of 1921.

(g) Act of 1912, s. 7.

(h) S.R. & O., 1927, No. 106.

owners and occupiers of the land it is proposed to take and for giving public notice of the application (*i*). [195]

The Minister must hear and consider any objection to an application for authorising a light railway on the ground that it will injure any building or other object of historical interest, or will injuriously affect any natural scenery (*k*).

The Minister, before deciding on an application, is to give full opportunity for any objections to be laid before him, and is to consider all such objections, whether made formally or informally (*l*). A local inquiry must be held (*m*).

The Minister is to consider the application with special reference to the expediency of requiring the proposals to be submitted to Parliament; to the safety of the public; and to any objection lodged with him (*n*).

If after consideration the Minister thinks that the application should be granted, he is to settle any draft order submitted to him, and see that all such matters (including provisions for the safety of the public and particulars of the land proposed to be taken) are inserted as he thinks necessary for the proper construction and working of the railway (*o*).

An order of the Minister has effect as if enacted by Parliament, and is to be conclusive evidence that all requirements of the Acts have been complied with (*p*). [196]

Inquiries by the Minister.—Part I. of the Board of Trade Arbitration, etc., Act, 1874 (*q*), applies to any inquiry held by the Minister of Transport for the purposes of the Light Railways Act (*r*). [197]

Local Authorities and Light Railways.—An order, which may be applied for by the council of any county, borough, or district, through any part of which the proposed railway is to pass (see *ante*, p. 81), may authorise the council of any county, borough or district to construct and work, or contract for the construction or working of a light railway; to advance money to a light railway company; or to join any other council, person or body in doing these things (*s*).

An application for an order so authorising a council may only be made in pursuance of a special resolution passed as directed by the Act of 1896 (*t*). Where the application is in respect of a railway in the area of two councils, it must be made jointly by the councils, unless the Minister is satisfied that it is expedient in the interests of one area that the council of that area should act alone (*u*).

Sect. 17 of the Act of 1896 (which dealt with joint committees) is repealed by the L.G.A., 1933. Joint committees may now be appointed by local authorities for any purpose in which they are jointly interested (except rating and borrowing money) under sect. 91 of the Act of 1933 (*a*). [198]

The expenses of any application or intended application by the council of a county, borough or district for any order authorising a light railway may (if allowed by the Minister of Transport) be paid

(i) Act of 1896, s. 7 (1).

(j) *Ibid.*, s. 7 (3).

(n) *Ibid.*, s. 9 (1); Act of 1921, s. 68 (1) (b).

(o) Act of 1896, s. 7 (4).

(q) 14 Halsbury's Statutes 210.

(s) *Ibid.*, s. 3 (1).

(u) *Ibid.*, s. 3 (2) (b).

(k) *Ibid.*, s. 22.

(m) *Ibid.*, s. 7 (1).

(p) *Ibid.*, s. 10.

(r) Act of 1896, s. 15.

(t) *Ibid.*, s. 3 (2) (a).

(a) 26 Halsbury's Statutes 355.

out of the county fund or general rate fund (as general expenses in the case of a county council or R.D.C.). The expenses of an application by a county council may be declared, by the order, or, if no order is obtained, by the Minister of Transport, to be special expenses chargeable on certain parishes, or parts of parishes, only (*b*).

Any money authorised by the order to be expended may be raised (1) if for capital expenditure, by borrowing with the sanction of the Minister of Transport; (2) if not for capital expenditure, as money on account of the expenses of an application (*c*).

The Minister of Transport may from time to time extend the limit for borrowing imposed by the order (*d*).

A council may be authorised by order to advance money to a light railway company as part of the share capital of the company or by way of loan (*e*), or to guarantee interest or dividends (*f*).

The demand note for a rate levied for meeting expenditure under the Light Railways Acts must state the proportion levied for that expenditure (*g*).

Where a council propose to give or join in giving a guarantee, the formalities required to be observed by Part XIII. of the L.G.A., 1933, in opposing a Bill in Parliament must be complied with (*h*). [199]

Rating of Light Railways.—In rural districts the occupier of any land used as a railway, constructed under the powers of any Act of Parliament for public conveyance, is liable to pay special rates in respect of one-fourth part only of the rateable value of the land (*i*). This exemption applies to light railways both of the railway and tramway type (*k*). It does not apply to a tramway constructed under the Tramways Act, 1870, though combined in one system with a light railway (*l*).

In boroughs or urban districts, the similar exemption conferred with regard to the general district rate by sect. 211 of the P.H.A., 1875 (*m*), is now represented by the percentage reduction of net annual value (proportionate to the relief enjoyed before the consolidation of rates) provided for by sect. 22 (1) (*e*), and Part II. of the Second Schedule to the R. & V.A., 1925 (*n*), for the purpose of arriving at rateable value. This reduced net annual value is to be treated as "net annual value" for the purposes of the further reduction in rateable value provided for freight transport hereditaments by sect. 68 of the L.G.A., 1929 (*o*),

(*b*) Acts of 1896, s. 16 (1); 1912, s. 5 (4).

(*c*) Act of 1896, s. 16 (2); L.G.A., 1933, ss. 195, 218; 26 Halsbury's Statutes 412, 424.

(*d*) Act of 1896, s. 16 (3).

(*e*) *Ibid.*, s. 3 (1) (*b*).

(*f*) Act of 1921, s. 71.

(*g*) Act of 1896, s. 16 (6).

(*h*) Act of 1921, s. 71 (1); L.G.A., 1933, Part XIII.; 26 Halsbury's Statutes 443.

(*i*) R. & V.A., 1925, s. 3 (2); 14 Halsbury's Statutes 622.

(*k*) *Wakefield Corp. v. Wakefield and District Light Rail. Co.*, [1908] A. C. 293; 38 Digest 490, 461.

(*l*) *Swansea Improvements and Tramway Co. v. Swansea Urban Sanitary Authority*, [1892] 1 Q. B. 357; 38 Digest 489, 460; *Tottenham U.D.C. v. Metropolitan Electric Tramways, Ltd.*, [1913] A. C. 702; 38 Digest 490, 463.

(*m*) Repealed in part by the R. & V.A., 1925.

(*n*) 14 Halsbury's Statutes 647, 693.

(*o*) 10 Halsbury's Statutes 928.

and light railways of the railway (but not of the tramway) type have the benefit of the relief from rates thus afforded. This section provides that the rateable value of a freight transport hereditament shall be one-fourth of the net annual value of the whole when it is used wholly for transport purposes; or, when it is partly so used, one-fourth of the net annual value of the parts so used plus the whole of the net annual value of the parts not so used (p).

"Freight transport hereditament" is defined in sect. 5 of the R. & V. (Apportionment) Act, 1928 (q). In relation to light railways, it means a hereditament occupied and used wholly or partly for railway transport purposes as part of a light railway undertaking, whereof the railway is used as a public railway for the conveyance of merchandise otherwise than by passenger train or carriage (r). The "light railway" must not be "one laid wholly or mainly along a public carriageway, and used wholly or mainly for the carriage of passengers." The undertaking must be one carried on by a light railway company as defined in sect. 5 (8) of the R. & V. (Apportionment) Act, 1928 (s).

"Railway transport purposes" include the construction, maintenance and repair of ways and works.

A hereditament primarily occupied and used as offices for the general direction and management of the undertaking is not a freight transport hereditament. See proviso to sect. 5 (1) of the above Act.

Railways (Valuation for Rating) Act, 1930.—A scheme for applying all or any of the provisions of the above Act (with or without modifications) to a company whose principal business is the working of a light railway as defined in sect. 5 of the R. & V. (Apportionment) Act, 1928, may be submitted to the Minister of Transport by the company or by the railway assessment authority. See Sched. I. to the Act of 1930 (t).

In making a light railway order, the Minister, if advancing money, may provide for the limitation of the assessment of the light railway. See *ante*, p. 84. [200]

Rates and Charges. For *Light Railways of "Railway" type*.—The rates and charges that may be made by a light railway company whose undertaking is of the "railway" type (Class A) are regulated by sect. 72 of the Act of 1921. The provisions of any light railway order conferring powers of charging are to have effect subject to the provisions of that section.

Sub-sect. (2) of the section provides that any light railway company whose railway connects (whether by means of a junction or of adjacent sidings) with the railway of an amalgamated railway company, or of a railway company to which a schedule of standard charges has been applied, shall be entitled to make charges not exceeding those which such company is for the time being authorised to make, with this

(p) The relief from rates so allowed must be paid into the Railway Freight Rebates Fund. See *post*, p. 89.

(q) 14 Halsbury's Statutes 719.

(r) The railway may be so used only to a small extent.

(s) "Light railway company" includes any person or body of persons, whether incorporated or not, who are authorised to construct, or are owners or lessees of any light railway authorised by or under any Act, or who are working a light railway under any working agreement. "Light railway" includes a tramroad authorised by any special Act, that fulfils the conditions given in the text. See s. 5 (3) of the Act cited.

(t) 23 Halsbury's Statutes 478.

qualification, that for the purpose of the calculation of mileage rates each mile of a light railway shall be treated as if it were $1\frac{1}{2}$ miles. [201]

By sect. 72 (4) of the Act of 1921, Part III. of the Railways Act, 1921, is not to apply to light railways, except so far as it relates to :

- (i.) the granting, variation, cancellation and apportionment of through rates ;
- (ii.) the conditions of carriage of merchandise ;
- (iii.) the determination by the rates tribunal of questions that may be brought before them in respect of the matters mentioned in sect. 28 of the same Act. That section defines the general powers of the rates tribunal. These include the determination of questions as to the classification of merchandise ; through rates ; group rates ; trader's tolls ; terminals, services and accommodation (not at a station) ; charges for services or accommodation for which no authorised charge is applicable ; the packing of articles liable to damage ; passengers' luggage ; and the constitution of joint committees.

All the provisions of Part III. are, however, to apply to a light railway that becomes part of the system of an amalgamated railway company. [202]

The provisions of sect. 14 of the Regulation of Railways Act, 1873 (u), which deals with the publication of rates in books kept at stations and wharves, apply to light railway companies (a), although repealed for other railway companies by the Act of 1921 (see sect. 86 and Sched. IX. to that Act). Books showing the rates for the time being in force must be kept at every station and wharf.

The power conferred by this section upon the Railway and Canal Commissioners to order the disintegration of the rates is transferred to the Railway Rates Tribunal by sect. 72 (5) of the Act of 1921.

Sects. 33, 34 of the Railway and Canal Traffic Act, 1888 (a), which deal with the keeping of tables of classification of merchandise for public inspection, and the publication of rates for places other than stations, also apply to light railways, though repealed as above for other railways. [203]

Road and Rail Traffic Act, 1933.—Part II. (Railway Traffic) of the Road and Rail Traffic Act, 1933 (b), applies to light railways of the " railway " type, as the definition in sect. 45 of " railway " for the purposes of Part II. includes a light railway, not being a light railway " which is laid wholly or mainly along a public carriage way, and is used wholly or mainly for the carriage of passengers." Under sect. 37 in Part II., a railway company may, with the approval of the Railway Rates Tribunal, make charges agreed with any trader for the carriage of merchandise. The approval of the Minister of Transport is required before any new, or newly electrified, line for the conveyance of passengers is opened (sect. 41). The Part also contains provisions as to level crossings and the reporting of accidents (sects. 42, 43). [204]

Rebates under Railway Freight Rebates Scheme.—In the case of a

(u) 14 Halsbury's Statutes 208.

(a) But not to a light railway forming part of the system of an amalgamated railway company : Railways Act, 1921, s. 86 (2).

(a) 14 Halsbury's Statutes 235.

(b) 26 Halsbury's Statutes 901.

light railway that is a freight transport hereditament, rebates must be allowed to certain selected traffic in accordance with the Railway Freight Rebates Scheme (c). These rebates are recouped from the Railway Freight Rebates Fund, to which the whole of the relief from local rates allowed to railway freight transport hereditaments is paid. [205]

For Light Railways of "Tramway" type.—The powers of charging of a light railway company of the "Tramway" type (Class B) are conferred by the order authorising the railway. The order usually provides for maximum charges in respect of passengers and goods ; for charging by stages ; for the exhibition of passenger charges in carriages ; for workman's cheap fares ; for the recovery of rates and charges ; and for their revision.

A light railway undertaking of this type was not subject to a railway rates and charges order at the passing of the Railways Act, 1921. Its owners were not, therefore, a railway company within the meaning of that Act. See sect. 85 of the Act of 1921. [206]

London.—The Acts of 1896 and 1912 extend to London, but the position of transport in London differs so profoundly from that in the rest of the country since the creation of the London Passenger Transport Board by the London Passenger Transport Act, 1933 (d), that it is impossible to deal with it as part of an article devoted to the general position in the rest of the country. (See title **LONDON ROADS AND TRAFFIC**.) Certain powers and obligations under various light railway orders with amendments were transferred to the Board by the Act of 1933. See provisos to sect. 5 (4) and sect. 100 of the Act. [207]

(c) S.R. & O., 1929, No. 619. See L.G.A., 1929, s. 136, and Sched. XI. ; 10 Halsbury's Statutes 974 and 1001.

(d) 26 Halsbury's Statutes 744.

LIGHTING

See **LIGHTING AND WATCHING ACT, 1833** ; **STREET LIGHTING**.

LIGHTING AND WATCHING ACT, 1833

See also titles : FIRE PROTECTION ;
STREET LIGHTING.

The Lighting and Watching Act, 1833 (*a*), enables provision to be made in rural parishes for street and public lighting, and authorises the provision in such parishes of fire engines ; the provisions of the Act as to watchmen are superseded by the County Police Act, 1840. The Act of 1833 is an adoptive Act, and can only be adopted by a parish meeting (*b*) held for the whole of a rural parish or for a part of a rural parish for which it is proposed to adopt the Act, or at a poll following such a meeting. The streets and public buildings in a contributory place of a rural district may be lighted by the R.D.C. under sect. 161 of the P.H.A., 1875 (*c*), if this section is put in force in the contributory place by an order of the M. of H. under sect. 276 of the Act (*d*). But procedure under the Act of 1833 is often preferred, notwithstanding its antiquated provisions, because (i.) the parish council, not the district council, are the lighting authority, and (ii.) the Act of 1833 allows a village in a rural parish to be constituted a lighting district and the expenditure in lighting to be charged on the lighting district to the exclusion of outlying farm lands. The derating of agricultural land has, however, caused the second point to lose some of its importance.

For the adoption of the Act of 1833, a two-thirds majority is requisite (*e*). On an application by three or more ratepayers for the parish, a parish meeting must be summoned within twenty-one days to consider adoption (Act of 1833, sect. 5), and the Act may be adopted for part only of a parish by a meeting called for that part of the parish (*f*). The Act may be abandoned by a parish meeting at any time after the expiration of three years from adoption (*ibid.*, sect. 15). The amount of money to be expended under the Act is fixed annually by the parish meeting (*ibid.*, sect. 9), but the expenses are now met by a special rate, or by an additional item of the general rate, in accord-

(*a*) 8 Halsbury's Statutes 1186—1214.

(*b*) L.G.A., 1894, s. 7 (1) ; 10 Halsbury's Statutes 779.

(*c*) 18 Halsbury's Statutes 692.

(*d*) See title STREET LIGHTING in which the power of a county council to light roads, under s. 23 of the Road Traffic Act, 1934 (27 Halsbury's Statutes 552), is also dealt with.

(*e*) Lighting and Watching Act, 1833, s. 8 ; 8 Halsbury's Statutes 1187. *I.e.* two-thirds of the local government electors present at the parish meeting, or voting at a poll if demanded in accordance with the L.G.A., 1933, Sched. III., Part VI. If the Act is not adopted by a meeting convened for the purpose, or after a poll demanded at such meeting, a further meeting for adoption cannot be called within one year of the previous meeting ; Act of 1833, s. 16.

(*f*) *Ibid.*, s. 78 ; 8 Halsbury's Statutes 1213 ; L.G.A., 1894, s. 7 (4) ; 10 Halsbury's Statutes 779.

ance with sect. 3 of the R. & V.A., 1925, and the provisions of the Act of 1833, as to rating, are obsolete. [208]

In a rural parish having a parish council, the Act is executed by the parish council if (1) the Act was adopted for the whole parish prior to the appointed day under the L.G.A., 1894, or (2) the Act is adopted after the appointed day for the whole or part of the parish (g), or (3) where the Act of 1833 was in force in part of a parish prior to the appointed day, and the lighting and watching inspectors, or the parish meeting for that part of the parish, have transferred the powers of the inspectors to the parish council (h).

In a rural parish without a parish council, and in which the parish meeting has not been invested by the county council with the appropriate powers of a parish council (i), the adoption of the Act of 1833 must be followed by the appointment of lighting inspectors (*ibid.*, sects. 8 and 17) who are entrusted with the execution of the Act. The inspectors must be not more than twelve nor less than three persons as the parish meeting determine (*ibid.*, sect. 8), who are residents of the parish assessed to the general rate in respect of property of rateable value of £15 or more, and are elected by the parish meeting (*ibid.*, sect. 17). Where inspectors are appointed their proceedings are regulated by the following sections of the Act of 1833 (k), which sections are wholly or partly repealed by the L.G.A., 1933, so far as relates to parish councils:

Sect. 18.—Annual production of accounts by inspectors, and convening of parish meeting for that purpose, and for the election of inspectors and the fixing of the amount of money to be raised.

Sect. 19.—Proceedings at the meeting convened pursuant to sect. 18 (*supra*); one-third of the inspectors retire annually and are eligible for re-election. Casual vacancies are filled under sect. 21 if the number of inspectors falls below three.

Sect. 22.—The inspectors are to meet monthly on the first Monday of each month at noon to receive complaints.

Sect. 23.—Provides for special meetings of the inspectors at forty-eight hours' notice given by two inspectors (or by one only, if not more than three have been appointed) and fixes the quorum at not less than one-third of the whole number of inspectors, or not less than two where only three are appointed.

Sect. 24.—Authorises the appointment and payment of officers and the hiring of offices for transacting business.

Sects. 25 to 27 provide for security to be given by the treasurer, and for accounting, and include remedies for failure to account by the treasurer and officers.

Sects. 30, 31.—Provision for keeping minutes of meetings and accounts.

Sects. 57 to 59.—These sections empower the inspectors to enter into contracts for lighting and for the provision of appliances, regulate the form of contracts, and require a newspaper advertisement for tenders, giving fourteen days' notice, in respect of contracts exceeding £20; the inspectors may sue for breach of contract, and may compound with a contractor; they may also purchase or rent land. [209]

(g) L.G.A., 1894, s. 7 (5), (7); 10 Halsbury's Statutes 770.

(h) *Ibid.*, s. 53 (1); *ibid.*, 810.

(i) L.G.A., 1933, s. 273; 26 Halsbury's Statutes 451.

(k) 8 Halsbury's Statutes 1191 *et seq.*

By sect. 29 of the Act of 1833, the inspectors may sue or be sued in the name of any one of them; and by sect. 60 the property in lamps, etc., vests in the inspectors. By sect. 61, inspectors of adjoining parishes may unite for the purpose of carrying the Act into effect.

The proceedings of a parish council in relation to the foregoing matters are regulated by the L.G.As., 1894 and 1933, subject to the provisions of sects. 45—54, 74, 75 of the Act of 1833 (which apply to inspectors and to parish councils) for the protection of private premises, water-pipes and water-supplies.

The wilful destruction of lamps, lamp-posts, etc., is punishable on summary conviction by a fine not exceeding 40s., and payment of damages not exceeding £5 may be ordered (Act of 1833, sect. 55). Reasonable damages may be recovered summarily from a person who carelessly or accidentally breaks a lamp, lamp-post, etc. (*ibid.*, sect. 56). [210]

As to the power of providing a fire-engine under sect. 44 of the Act of 1833, see title FIRE PROTECTION. This power may be exercised by entering into an agreement with a neighbouring borough or district for the use of the borough or district fire appliances and firemen (*l*).

Where the area for which the Act of 1833 has been adopted is not co-extensive with a rural parish, and it is proposed to extend or reduce the lighting district, the Act of 1833 should be abandoned under sect. 15, assuming that three years from the date of the adoption have elapsed, and fresh proceedings initiated for the adoption of the Act for the lighting district as altered. Alternatively the county council may, on the application of the parish council (*m*), alter by order the boundaries of the lighting district (*n*).

A rate leviable under the Act of 1833 and the expenditure thereof must be included in the local financial returns to the M. of H., required by sect. 244 (2) of the L.G.A., 1933 (*o*).

Where a place is constituted or included in a borough or urban district, the Act of 1833 is superseded and the property of the lighting authority is transferred to the council by sect. 163 of the P.H.A., 1875 (*p*). In London, a similar transfer to the vestries and district boards, the predecessors of metropolitan borough councils, was made by sects. 90, 130 of the Metropolis Management Act, 1855 (*q*). [211]

(*l*) Parish Fire-engines Act, 1898, s. 1; 10 Halsbury's Statutes 833.

(*m*) *Senble*, where there is no parish council the county council could confer on the parish meeting under s. 273 (1) of the L.G.A., 1933, the function of making this application.

(*n*) L.G.A., 1894, s. 53 (4); 10 Halsbury's Statutes 811. See, however, the description in the sub-section of the points on which the county council must be satisfied.

(*o*) 26 Halsbury's Statutes 437.

(*p*) 13 Halsbury's Statutes 698.

(*q*) 11 Halsbury's Statutes 904, 917.

LIGHTS ON VEHICLES

See ROAD TRAFFIC.

LIMITATION OF ACTIONS

*See ACTIONS BY AND AGAINST LOCAL AUTHORITIES ;
PUBLIC AUTHORITIES PROTECTION ACT.*

LIMITATIONS ON BORROWING

See BORROWING.

LOAN CONSOLIDATION

See BORROWING ; CONSOLIDATED LOANS FUND.

LOAN EXHIBITS

See MUSEUMS.

LOANS

See BORROWING.

LOCAL ACTS

See PRIVATE ACTS.

LOCAL AUTHORITIES

See LOCAL GOVERNMENT.

LOCAL AUTHORITIES, ACCOUNTS OF

See ACCOUNTS OF LOCAL AUTHORITIES.

LOCAL AUTHORITIES (EXPENSES) ACT

See SURCHARGE.

LOCAL CENSUS

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See also title : CENSUS.

Meaning.—The taking of a general census of England and Wales under the Census Act, 1920 (*a*), has been dealt with under the title CENSUS (*b*). By sect. 6 of that Act provision is made for allowing a local census to be taken for the whole or part of an area of a local authority. [212]

Method of Taking Census.—An application for such a census must be made to the M. of H., the local authorities who may apply being the Common Council of the City of London, metropolitan borough councils, and the councils of counties, boroughs and urban districts (*c*). The application of the council may be that a local census should be taken for the whole or any part of their area, or for the whole or any part of their area and of an adjoining area. Without prejudice to the powers of any of the other local authorities mentioned, a county council may apply for a census of the whole of their area including the areas of other authorities. The Minister then, if he thinks fit, submits the application to the Privy Council, and if it appears expedient for the purpose of facilitating the due performance by the local authority of their statutory duties, an Order in Council, directing the census to be taken, is made.

The provisions of the Act in regard to the taking of a general census, which are set out in the title CENSUS, are applied by sect. 6 (2) to the taking of the local census, except the proviso to sect. 1 (1) requiring that five years must have elapsed since the taking of the last census. Exceptions, modifications and adaptations may, however, be made by the Order in Council.

So far sect. 6 has not been used by any local authority, but as it is unlikely that a quinquennial census will be taken in 1930, a greater demand for exact returns of the population of a borough may arise before 1941, though the means of making accurate estimates have improved. [213]

Expenses.—By sect. 7 of the Act any expenses incurred in the taking of a local census, including the publication of any reports or returns relating to it (*d*), are to be paid by the local authority who make the application, and are to be defrayed by the Common Council of the City of London and a metropolitan borough out of the general rate; and by a county council as expenses for general county purposes, and by other councils as expenses incurred in the administration of the Public Health Acts. [214]

(*a*) 3 Halsbury's Statutes 555.

(*b*) Vol. II., p. 486.

(*c*) S. 6 (3); 3 Halsbury's Statutes 557.

(*d*) As to the making of reports by the Registrar-General in regard to a general census, see s. 4 of the Act; 3 Halsbury's Statutes 556.

LOCAL GOVERNMENT

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The Tudors to 1834.—Local government in England and Wales as it exists at the present day is the sum of the solutions of innumerable political and administrative problems which have arisen at various periods. These problems were solved not at all in the light of any generally accepted theory or solely with regard to immediate practical expediency. The influence of political and administrative theories has been very great, but these theories differed sharply from each other, and different theories have been applied alternately or even simultaneously. The solutions have not even been the work of one institution, since Parliament, the courts, the central departments, the local authorities themselves and assemblies of public spirited citizens have each made substantial contributions. A constant and close pre-occupation with practical expediency has given a real coherence and great vitality to what, theoretically, could hardly be called a system at all. This real system is to-day still in a state of development under the influence of tendencies which are not always wholly reconcilable with each other. Thus, in no way can local government in this country be described by reference to any one plan either laid down in the past or towards which all alterations are tending at present. There have been such plans in the past but they were imposed on an existing situation which was left otherwise unaltered and were themselves not continuously or logically carried out. [215]

For example, the central Government under the Tudors made immense improvements in poor law and highway administration and in local taxation and it made them on a consistent plan. The plan was to take the parish as the area for all these purposes. The advantages were that the parish was a community in fact and it existed in roughly the same form in the greater part of the kingdom. The revenue was raised from property in the parish, the executive officers were parishioners, the work to be done was in the main not only for the parishioners' own benefit but could be seen by them to be so, and it was done in their full view. For these reasons the system was to some extent self-acting and, although stimulus was frequently applied, the national Government found it unnecessary to make any fundamental changes or even any very substantial additions. Such control as was exercised was mainly judicial in form. It sufficed because the functions were comparatively simple, society was relatively static, the demanded standard of life, though rising, was rising only slowly, and the problems to be solved, though in sum national, yet were individually capable of local solution. Since the population was still small enough to allow of persons of special energy and intellect making their qualities effective

without devoting any large proportion of their time to local administration, the element of friction in the solution of individual local problems caused by the difficulty of bringing individual views home to, and exerting pressure on, the effective authority was small.

[216]

Besides the parochial authorities the most important of the other authorities acting locally were the lords lieutenant, the sheriffs, the justices and the boroughs. The three former were under the direction of the central Government and the new system set up by the Tudor Government either did not concern their primary functions, or as in the case of the justices found in them an existing organisation which was used for its completion. The system made no use of the boroughs which continued to live a vigorous life quite independent of it.

[217]

The disorganisation introduced into the central administration by the Civil War and its aftermath permanently impaired the internal administrative functions of the central Government. The struggle between the Parliament and the executive bred an extreme dislike of the power of the executive among the partisans of the Parliament which their final victory enabled them to indulge. This state of affairs continued all through the eighteenth and the early part of the nineteenth centuries. It precluded the central Government from the initiation of any fresh experiments in local government or improvements on a large scale or even, although some improvements were made in highway administration, any adequate maintenance and supervision of the existing system. Since, however, the country increased greatly in population and wealth during the same period and the improvement in the standard of life was accelerated, improvements in the local administration became necessary. The central Government being unable to take the initiative, the gaps were filled partly by extra-legal developments by quarter sessions and partly by local Acts. The gap between the desired standard of administration and the machinery which theoretically existed to secure it was increased by the decay of the boroughs which had on the whole lost vitality and initiative and did nothing towards providing machinery to meet the new needs. This decay, which had become marked during the latter half of the seventeenth century, was increased by their manipulation for political reasons. Immediately before the passing of the Poor Law Amendment Act, 1834 (a), the position as to the internal administration of the country was as follows: the central administration confined itself mainly to matters of police, which it carried out on the whole inefficiently, and the collection of taxes. The administration of the relief of the poor, a function which, apart from its qualitative importance, had become quantitatively urgent, was in the hands primarily of parochial authorities, but in practice subject to close and constant control and stimulation by the justices, which was often carried to a point far beyond that contemplated by the law. The roads were in the same position except that there had been a great development of turnpike trusts, the trustees not infrequently being justices. Police, which was one of the functions with which the central government concerned itself, was locally administered mainly by the justices. The justices were appointed by the central Government, but in practice

(a) 4 & 5 Will. 4, c. 76. Replaced by the Poor Law Act, 1927, and later by the Poor Law Act, 1930; 12 Halsbury's Statutes 968.

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acted with very little supervision from it, and supplied their very considerable initiative themselves.

The boroughs were more or less moribund. [218]

Both administrative and political problems confronted the Government. Administratively the poor law had reached the point of breakdown, and the method of its administration, even had it been successful, was repugnant to the dominant economic ideas of the time. Politically neither the boroughs as a whole nor the justices were democratic in organisation. The dominant Whigs also were not anxious to leave the justices, who were mostly drawn from the ranks of their opponents, in continued possession of their enormous power. [219]

1834 to 1869.—The first question dealt with was the poor law. This was dealt with on a consistent plan which took little account of any existing institutions. The parish was retained as a unit but the principal areas of administration of the new scheme were districts devised for reasons of pure administrative convenience and formed by combining existing parishes into poor law unions. The governing bodies, the boards of guardians, were to be elected on a consistent democratic system, though in addition to the elected guardians, justices were *ex officio* members of the boards. Their functions were defined in general terms in the law, but they were subjected to a very close central control. The central authority was a new department called the Poor Law Commissioners. The Commissioners were established for five years only by the Act. This department was given immense powers of control over the detailed actions and expenditure of the guardians, and over the appointment, salary and dismissal of their officers, and was moreover given power to prescribe by order the method of operation. The establishment of the Poor Law Commissioners was the first attempt to fill the gap in the administrative technique of the central Government that had resulted from the breakdown of the administration of the Privy Council following the Civil War and the rebellion of 1688. The system set up to administer the Poor Law possessed, then, certain characteristics which appear to be considered increasingly desirable at the present day (see *e.g. post*, pp. 116, 117), though their desirability in any system was sometimes violently and often successfully disputed. The characteristics referred to were that local administration should be in the hands of elected bodies; that these bodies should exercise defined functions; that they should exercise them over areas chosen primarily for administrative convenience; that they should exercise them under the supervision of a central department, and that the central department should possess considerable powers of extending the law relating to those functions. The next year the Government dealt with the boroughs, in three respects, on the same lines. These three respects were that the boroughs were confined to definite functions by the provision that they might incur no expenditure except in a manner defined by law, that their governing bodies were to be democratically elected and that one uniform model was adopted for all the authorities with which the Act dealt. They were not, however, subject to close administrative control, and their areas were defined for historical reasons and not for reasons of administrative convenience. The Municipal Corporations Act, 1835 (*b*), did not deal with all the boroughs. [220]

(b) 5 & 6 Will. 4, c. 76. Replaced by the Municipal Corporations Act, 1882; 10 Halsbury's Statutes 576.

The functions of the new councils of the boroughs were mainly conceived from a police point of view, that is to say, they were to set up a watch committee and a police force, and were given powers of lighting the borough, which was then considered mainly as an aid to effective policing. They had also powers in relation to the setting up of criminal courts and had a somewhat undefined power of making bye-laws. [221]

In 1836 the Highway Act, 1835 (c), came into force. In comparison with the Poor Law Amendment Act, 1834, and the Municipal Corporations Act, 1835, it was curiously unprogressive. The administration of the highways continued to be entrusted directly to an official, the surveyor, who was annually elected, compelled to accept election and unpaid. The Act did, however, provide for the appointment of paid surveyors in some cases and for the union of parishes for the appointment of a paid surveyor. It also provided a curious device by which, in parishes where the population exceeded 5,000, the vestry might elect a number of surveyors who should together form a board for the superintendence of the repair of the highways and could employ and pay a skilled staff. Very extensive powers of stimulation and control were reserved to the justices. The Highway Act, 1835, is only worthy of mention here as providing a strange contrast at the same period to the Poor Law Amendment Act, 1834, and the Municipal Corporations Act, 1835. [222]

The number of *ad hoc* authorities, already large, was steadily growing in response to the needs of the country, which were developing owing to the increase and shift of the population, and were more acutely felt owing to the improvement of scientific knowledge. The development of the doctrine of *ultra vires* (d) by the courts during this period prevented administrative gaps being filled by extra legal action as had been done by the justices in the eighteenth century. This check, combined with the inaction of the central Government, compelled any group of people who wished to improve the administration of their own neighbourhood to apply for the constitution of an *ad hoc* authority by means of a local Act. These authorities were, individually, devised for reasons of administrative convenience, as to their constitution, functions and areas, but they did not form part of any coherent scheme and were set up beside the universal boards of guardians and the numerous reformed boroughs without any general relevance to them or even to each other. They naturally tended to a certain similarity among themselves. This tendency was much assisted by the passing from time to time of adoptive Acts, e.g. the Lighting and Watching Act, 1830 (e). These adoptive Acts provided for the establishment of *ad hoc* authorities to administer them, and so, though the types of *ad hoc* authorities were reduced in number and the variations between individuals within the types tended to diminish, the actual number of *ad hoc* authorities was increased. In fact the passing of the adoptive Acts, depending, as they did, upon local initiative, amounted to nothing more than an improvement in local legislation. [223]

A further experiment in adoptive Acts was made in 1847 by the

(c) 5 & 6 Will. 4, c. 50; 9 Halsbury's Statutes 50.

(d) See title *ULTRA VIRES*.

(e) 11 Geo. 4 & 1 Will. 4, c. 27, repealed and replaced by the Lighting and Watching Act, 1833; 8 Halsbury's Statutes 1186.

passing of the Towns Improvement Clauses Act, 1847 (*f*), and the Town Police Clauses Act, 1847 (*g*). These two Acts, in so far as they were adopted, had the advantage of stereotyping the functions commonly conferred by local Acts on the governing bodies in towns without adding to the number of the *ad hoc* authorities. [224]

During this period a development was taking place which was unconnected directly with the general development of local authorities though it was destined to affect them directly and profoundly.

The supply of water, though universally necessary, contained possibilities of profit, and so it had been possible, in places where it was not supplied by nature, to leave water to be supplied by varieties of private enterprise spasmodically assisted by public and charitable efforts. The use of gas for lighting, due to comparatively recent discovery and development, had naturally been left as a service to be supplied by anyone who hoped to make a profit out of it. Since both enterprises needed statutory powers for their full development, and since they both tended to be monopolies (*h*), some control by limitation of profits had been imposed (*i*). Both forms of enterprise had become sufficiently popular to make it worth while to pass two "clauses Acts" dealing with them, the Gasworks Clauses Act, 1847, and the Waterworks Clauses Act, 1847. [225]

In the meanwhile the functions which public opinion considered to be desirable to be performed by public authorities were increasing. The old stability of communities was breaking up, as population was increasing rapidly and, owing to commercial and manufacturing development, very unevenly. It became desirable, therefore, that there should be some means of providing for the setting up of local authorities on some basis at once more regular and less cumbersome than the method by local Act and resulting in a simpler situation than either the methods of local Acts or adoptive Acts. By the P.H.A., 1848 (*k*), both these objects were attained. It is interesting to note that the preamble to the Act stated that it was desirable that certain functions, *e.g.* water supply, sewerage and paving, should be under one local management and should be subject to supervision (*l*). The Act therefore established a General Board of Health. The General Board of Health had power to put the Act in force by Order in Council or provisional order upon petition by a certain number of ratepayers or on their own motion if the death rate exceeded a certain proportion. The districts in which the Act was to be put in force, however, were to be chosen for their convenience for this particular purpose, and the Act showed only the slightest regard for the desirability of concentrating power in the hand of one local authority in each area, for, though sect.

(*f*) 10 & 11 Viet. c. 34; 13 Halsbury's Statutes 531.

(*g*) 10 & 11 Viet. c. 89; *ibid.*, 601.

(*h*) The tendency was at times slow in operation. In London the first gas company, which had been founded in 1812, was, till 1860, in competition with other companies in the same area. It is worth remark that an attempt in 1854 by the S. London gas companies to put an end to this situation had been defeated by the opposition of the local authorities.

(*i*) See s. 30 of the Gasworks Clauses Act, 1847; 8 Halsbury's Statutes 1225, and s. 75 of the Waterworks Clauses Act, 1847; 20 Halsbury's Statutes 210.

(*k*) 11 & 12 Viet. c. 63. Repealed by P.H.A., 1875; 13 Halsbury's Statutes 623.

(*l*) What had been hitherto the only central supervising authority of a modern type, namely the Poor Law Commissioners, had carried out their functions with a vigour for which public opinion was, as yet, unprepared, and an increase in opinion adverse to the commissioners had led to their reconstitution on a political basis in 1847. See the Poor Law Board Act, 1847 (10 & 11 Viet. c. 109).

12 provided that, where a district to which the Act was to be applied was entirely within the confines of the borough, the borough council were to be the local board of health, and sect. 32 provided that commissioners or trustees under a local Act might be the local board of health, yet the Act expressly contemplated the boundaries of the districts under the jurisdiction of the local boards of health not coinciding with borough or parish boundaries.

In one direction the Act did provide for a concentration of power, namely by enacting that the local boards of health within their districts should always be the surveyors of highways, but even this simplification was necessarily achieved at the expense of adding another highway authority of a different type to those already existing. [226]

The P.H.A., 1848, took what must have seemed an obvious step in authorising a local board of health to supply their district with water (*m*). The power was limited in that the local board were not to supply water where a water company were able and willing to do so. Sect. 121 of the Towns Improvement Clauses Act, 1847, had already (where it was in force) given certain powers of water supply to the town commissioners acting under a local Act with regard to works for a gratuitous supply, and sect. 122 allowed them to contract with the owners of waterworks or any other person for a supply of water (*n*).

There was, therefore, by this time a recognition that it was desirable that, as regards water supply, any gaps left by private enterprise should be filled by local authorities.

The General Board of Health itself was set up for only five years. The tone of the Act was therefore experimental and, moreover, showed no regard either for historical continuity or, despite the expressions in the preamble, for any general plan. [227]

In 1858 the powers of control of the General Board of Health were abolished by the L.G.A., 1858 (*o*). The Act was an amendment of the P.H.A., 1848, and greatly extended the powers possessed by the adopting local authorities for protecting the public health. It provided for adoption by councils of boroughs, elected commissioners, or elsewhere by owners and ratepayers, and facilitated adoption by the latter by providing that a Secretary of State might decide what a "place" was in order that the owners and ratepayers thereof might adopt the Act. This Act, though retrogressive in that it abrogated central co-ordination, made some improvement in regularising the local authorities by making use of existing town councils and improvement commissioners as authorities for adopting and executing the Act and by a partial absorption into these local boards of health of the lighting and watching and burial authorities.

It may be mentioned that the process of passing local Acts had become brisker than ever. [228]

In 1862 the establishment in some parts of the country of another type of local authority, unconnected with any pre-existing local authority, was provided for by Parliament. By the Highway Act, 1862 (*p*), the justices were permitted to form highway districts ruled by highway boards which must be distinguished from the boards for the repair of the highways of populous parishes set up under the Highway Act, 1835. The boards filled the office of surveyor of the parishes

(*m*) S. 75.

(*n*) 13 Halsbury's Statutes 571.

(*o*) 21 & 22 Vict. c. 98. Repealed by the P.H.A., 1875.

(*p*) 9 Halsbury's Statutes 122.

included in the district which retained their separate identity for purposes of liability and expenses. The Act did not permit the formation of highway districts to include any part of a district constituted under the P.H.A., 1848, or the L.G.A., 1858, or any part of a borough without the consent of the town council (sect. 7). The prohibition as to inclusion of districts where the P.H.A., 1848, or the L.G.A., 1858, were in force led large numbers of small districts hastily to constitute themselves a district to which these Acts applied in order to prevent their inclusion in a highway district. This process assumed such serious proportions that it had to be checked by Act of Parliament in 1863. The L.G.A. Amendment Act, 1863 (*g*), provided that places with a population of less than 3,000 might not adopt the L.G.A., 1858, without the approval of a Secretary of State and also attempted to force districts in which the Act had been adopted to perform, their functions under it by annulling the adoption of the Act in districts of less than 3,000 population if within a short time limit they had not elected a local board and appointed officers.

This appears to be the first time that Parliament took the view that the self-constitution of local authorities might be an active danger to good administration. [229]

It may be noted in parenthesis that in the middle sixties the rise of a new public utility peculiarly connected with local authorities was anticipated. The Sewage Utilisation Acts, 1865 and 1867 (*r*), gave power to local authorities having control of sewers to come to agreements with companies as to sewage disposal. The Acts were in wide terms and included agreements as to construction of works, as it was expected that the disposal might be turned to considerable profit and consequently that such agreements would be frequent. Actually they proved almost useless as the disposal of sewage did not turn out to be profitable at that time. [230]

1869 to 1909.—The whole subject of local administration had by 1869 reached a remarkable state of confusion. In that year a Royal Commission was appointed with very wide terms of reference to inquire into public health administration. In their report, however, they specifically took account not only of public health but of the desirability of their recommendations being consonant with the general interests of local government in the country.

The second report of the Royal Sanitary Commission published in 1871 is of the greatest importance. Its criticism of the existing state of affairs showed a complete breach with the habit of mind in local government administration shown by Parliament up to and, with rare exceptions, since that date. Its immediate recommendations were on the whole carried out, but a similar state of affairs to that to which its criticisms were directed was allowed once more to grow up and still obtains (*s*), though in some respects for different reasons.

(*g*) 26 & 27 Vict. c. 17. Repealed by the P.H.A., 1875.

(*r*) 28 & 29 Vict. c. 75 and 30 & 31 Vict. c. 113. Repealed by the P.H.A., 1875.

(*s*) The L.G.A., 1933, has done something to remedy this state of affairs, and it is to be hoped that the Local Government and Public Health Consolidation Committee, who were responsible for that Act, may succeed in further clarifying that part of the law affecting local authorities with which they are concerned. The fact that various other codifying Acts such as the Education Act, 1921, the Poor Law Act, 1930, the Children and Young Persons Act, 1933, have been passed does not affect this statement since the mass of statutory functions has increased proportionately.

They criticised in the strongest manner the confusion in the terms of the law; the report refers to this again and again (*l*). They regarded this confusion as one of the main causes of the imperfection in sanitary administration in the country, and placed consolidation of the law in the forefront of their recommendations. They recommended in addition that the administration of sanitary law should be made uniform and imperative throughout the kingdom and that all powers should in every place be possessed by one responsible local authority kept in action and assisted by a superior authority. With regard to the central authority they traced many of the imperfections of administration to the dispersal of responsibility among the H.O., the Poor Law Board and the Privy Council. The true functions of such a control authority they believed to be stimulation, assistance and superintendence. [231]

This report had an immediate but ephemeral success. In 1871 the Local Government Board Act, 1871 (*u*), constituted the Local Government Board, and fused in it the diverse powers of the Poor Law Board, the public health powers of the Privy Council and the Local Government Act powers of the H.O.

The next year the P.H.A., 1872 (*x*), provided for the establishment all over the kingdom of sanitary authorities and for the absorption of any sanitary authorities having jurisdiction in the same district as other sanitary authorities. The method was to make use of the existing authorities, that is the borough councils, the improvement commissioners or local boards of health and, in rural areas, the boards of guardians. [232]

In 1875 the P.H.A. of that year (*a*) consolidated public health law.

The reliance on unaided and undirected local initiative alone had now ceased, except that the procedure of conferring powers on existing local authorities by local Act steadily accelerated.

The Royal Sanitary Commission had necessarily been concerned more with the interests of good administration of public health functions than with the fundamental problem of local government in this country, namely the expression of the sense of the local community. They were far from unaware of this aspect of the problem. In their second report they emphasised their recognition of the fact that the traditions and feeling of the country were strongly for local freedom and initiative

(*l*) *E.g.* p. 9: "The casual and experimental course of legislation which has led not only to confusion by unmeaning distinctions between common provisions for public health but to repetition of subjects in parallel enactments." P. 20: "Causes of present imperfection in sanitary administration." In the first place the law "is confusing," and after detailing four principal Acts they remark "Many large towns have moreover one or more special Acts applicable only to themselves." P. 21: "The number of these statutes and the mode in which they have been framed render the state of the sanitary laws unusually complex. This complexity has arisen from the progressive and experimental character of modern sanitary legislation which has led to the constant enlargement and extension of existing Acts without any attempt at reconstruction or any regard to arrangement. The fatal result is that the law is frequently unknown and even where studied is found difficult to be understood." P. 54: "The confusion of the existing sanitary law is one of the main causes of its defective administration. First: there are many statutes, some to be read together, some in repetition of each other, some for special cases only and some in practical conflict. Second: much is of optional, of uncertain and of partial application. Third: there are many local and private Acts producing want of uniformity. Fourth: the provisions themselves are incomplete."

(*u*) 3 Statutes 390.

(*x*) 35 & 36 Vict. c. 79. Repealed by the P.H.A., 1875.

(*a*) 13 Halsbury's Statutes 623.

and drew a very interesting comparison with the perfectly symmetrical system obtaining in that then despotically governed country, France. They referred to the "rock on which the General Board of Health was wrecked," namely, too despotic central administration. The result of their report as to regularising public health authorities was, however, necessarily to leave little room for the community sense. The new authorities, since they included boroughs, where the community sense was necessarily strong, and Improvement Act and Local Government Act districts which owed their very existence to an uprush of local initiative, corresponded to some extent (at all events at the time of their formation) with the actual existing communities in the country. It would be too much to say, however, that the poor law unions who became the rural authorities, having been originally formed for reasons of administrative convenience, ever had a very strong sense of community. Some flexibility in the boundaries of the districts rendered it possible to adjust the system in one way to the shifting of the community, but necessarily this flexibility had to be employed more for purely administrative reasons than for reasons of community. The latter sense found its outlet only in changing the status of the local authority, in forming an urban district, in obtaining a charter of incorporation, or later in altering a non-county into a county borough, or in extending the area or powers of an existing authority. [283]

The increase of knowledge and the improvement in the demanded standard of life, enormously increased the services to be performed by local authorities.

New Acts were frequently passed without regard to the principle of simplicity and codification of the law so heavily insisted upon by the Royal Sanitary Commission, and indeed their strictures quoted above would have applied with even greater force in any but the immediately succeeding period. One difficulty in applying the principle of one law applicable everywhere had already been apparent to the Royal Sanitary Commission, namely the difference in intensity of sanitary work and control between the urban and the rural district. They had met this by recommending (a recommendation that was carried out in section 276 of the P.H.A., 1875 (*b*)), that certain powers be only conferred direct by Act of Parliament on urban authorities, leaving to the new central authority to confer those powers on rural authorities by order when it was found to be necessary. [284]

During this period there occurred developments in three forms of administration of public services which profoundly affected local government, but which were outside the scope of the Royal Sanitary Commission. These developments were in education, in tramways and in highways.

While the Royal Sanitary Commission was still sitting, the Elementary Education Act, 1870 (*c*), provided for the division of the whole kingdom into school districts and for the setting up of specially elected education authorities called school boards in each of these districts, where and when the Education Department were satisfied that there was insufficient school accommodation in that district. This was the last attempt to set up over the greater part of the country a specially elected authority to perform one particular group of functions

(b) 13 Halsbury's Statutes 741.

(c) 33 & 34 Vict. c. 75. Replaced by the Education Act, 1921: 7 Halsbury's Statutes 180.

which applied to the population generally. The scheme had at least the merit that the school districts were the already existing areas of the boroughs and parishes. The central authority was the Education Department, a committee of the Privy Council and entirely distinct from the Local Government Board.

The principle of central control was strongly asserted in this Act, the Education Department having power to supersede entirely, though temporarily, a school board whom they considered to be in default (*d*). The Elementary Education Act, 1876 (*e*), set up bodies called school attendance committees to perform certain functions in all districts not under the jurisdiction of a school board. These school attendance committees were appointed in boroughs by the borough council and elsewhere by the guardians. There was a further power, given to the Education Department, to authorise the council of an urban sanitary authority of more than 5,000 population and co-extensive with a parish or parishes not within the jurisdiction of a school board, to appoint a school attendance committee to the exclusion of the appointing power of the guardians. The Education Department's powers of control were extended over the committees. [285]

During the period between the appointment of the Royal Sanitary Commission and the passing of the P.H.A., 1875, a new form of public service had been coming into prominence. A certain number of private Bills to give powers to companies to carry on tramway undertakings had been promoted. To facilitate the construction of tramways without the necessity for a private Bill the Tramways Act, 1870 (*f*), had been passed.

By this time there had been a very considerable experience of the working and control of important public services entrusted partly or wholly to private enterprise, requiring statutory powers, needing a large capital and tending, in fact, to a monopoly in respect both of gas and water. There had been some friction over gas supply and something of an agitation against the gas companies had been carried on (*g*). Tramways were still in some respects experimental, and this fact and the fact that tramway operations, by their effect on the surface of roads, peculiarly affected highway authorities, were brought into relation by the Tramways Act, 1870 with a new form of control designed to prevent any exploitation of the public. Sect. 43 of the Act provided that twenty-one years after a company had been empowered to construct a tramway, the local authority might purchase the undertaking upon terms which later were contended to be somewhat onerous to the company. It had been obvious why the supply of water had been entrusted to the local public health authority. It was not, *a priori*, quite so obvious why the power of purchase of tramways should be given to borough councils, paving commissioners, local boards of health and vestries. It must be remembered, however, that the *ad hoc* highway authorities were hardly developed enough to undertake the task, and in any case had jurisdiction mostly over districts in which it was unlikely that tramways would be constructed. Short of setting up new *ad hoc* authorities, which was hardly feasible in the circumstances, there were no other existing bodies, except the boards of

(*d*) Ss. 32, 63.

(*e*) 39 & 40 Vict. c. 70. Repealed by the Education Act, 1921.

(*f*) 20 Halsbury's Statutes 6. The Act did not apply to Ireland where general legislation was already in force.

(*g*) Particularly in 1866.

guardians and quarter sessions, both of whom were obviously unsuitable, who could be used. It was, at the time and for many years afterwards, considered that the local authorities ought to confine themselves to owning and maintaining the track and should not work the vehicles (*h*). In all these circumstances the course taken seems a reasonable one.

After the passage of the P.H.A., 1875, urban authorities under that Act had power everywhere to supplement the deficiencies of their district in respect of gas and water supply, and rural authorities in respect of water supply only (*i*). [236]

For some time the turnpike trusts, which controlled a great mass of principal roads all over the country, had been gradually breaking down, and first the cost and then the care of the roads under the jurisdiction of the trusts had been cast upon the parishes (*k*), and also later gradually upon the highway districts (*l*) formed under the Highway Act, 1862 (*m*). The county authority, *i.e.* quarter sessions, had become more and more concerned in roads in addition to county bridges by their powers of forming highway districts under the Highway Act, 1862, their powers of ordering contributions to the upkeep of turnpike roads by parishes and highway districts under 4 & 5 Vict. c. 59, and the Annual Turnpike Acts Continuance Act, 1863, as well as miscellaneous powers of control; see for example sect. 105 of the Highway Act, 1885 (*n*). It was rapidly becoming apparent that in the rural districts the expense of maintenance of roads would have to be spread over a much richer area than the normal parish. As has already been described, steps to this end had been taken by the formation of highway districts (who could afford to employ skilled surveyors) and by the local boards of health under the P.H.A., 1848 being made surveyors of highways within their districts (*o*), and by the charges cast upon the common fund of the highway districts with respect to turnpike roads (*p*). Sect. 13 of the Highways and Locomotives (Amendment) Act, 1878 (*q*), provided that one-half of the cost of maintenance of main roads should be paid by the county authority on a certificate of satisfaction as to the standard of maintenance given by the county surveyor. The main roads were disturnpiked roads and others from time to time declared to be main roads. This problem of securing a wide area of charge and administration had so far only become urgent with regard to roads, where it had been solved in the manner above described, and with regard to the poor law where it had been solved by the creation of the unions. [237]

The principle of identity of areas and of singleness of authority was carefully upheld in the Highways and Locomotives (Amendment) Act, 1878, which by sect. 3 (*r*), directed quarter sessions to endeavour, in forming or altering highway districts, to make them coincide with,

(*h*) Report of Select Committee of House of Lords, April 25, 1879, para. 14 (*i*).

(*i*) Ss. 51, 161; 13 Halsbury's Statutes 647, 692.

(*k*) See 4 & 5 Vict. c. 59.

(*l*) S. 1 of the Annual Turnpike Acts Continuance Act, 1863 (26 & 27 Vict. c. 94), contribution by Highway Board to repair of turnpike road; s. 15 of the Annual Turnpike Acts Continuance Act, 1871 (34 & 35 Vict. c. 115), by which such contributions are made a charge on common fund of contributing district; s. 10 of the Annual Turnpike Acts Continuance Act, 1870 (33 & 34 Vict. c. 73), cost of maintaining so much of disturnpiked road as is in highway district made charge on common fund of district.

(*m*) 9 Halsbury's Statutes 122.

(*o*) S. 117.

(*q*) 9 Halsbury's Statutes 172.

(*n*) *Ibid.*, 109.

(*p*) See *ante*, note (*l*).

(*r*) *Ibid.*, 167.

or be wholly contained within, rural sanitary districts, and by sect. 4 provided for the absorption of the functions of some highway boards by directing that the rural sanitary authority, that is to say the board of guardians, should act as the highway board where the highway district coincided with the rural sanitary district. It is interesting to note that by sect. 7 the expenses of highway boards in maintaining and repairing roads were to be deemed to be for the common use or benefit of the several parishes within the district and were to be charged on the district fund.

The county authority were given considerable default powers by sect. 10 of the same Act. These are notable as they mark the beginning of the emergence of an intermediate authority between the primary local authority and the central authority. This was a device which had been considered and rejected by the Royal Sanitary Commission, though Lord Robert Montagu's dissenting memorandum had strongly advocated the establishment of such an authority on more fundamental and scientific lines than have ever been adopted. [238]

By the year 1882 a new public service was ripe for development. Electric lighting was in a position somewhat similar to that in which trams had been in 1870. It was regarded as somewhat experimental; was, if it fulfilled its promise, obviously likely to be of the greatest public utility, and also would have to be developed on monopoly lines and with the advantage to the suppliers of statutory powers. The Tramways Act, 1870, was regarded by the local authorities and by the Board of Trade as having worked on the whole satisfactorily in the matter of control without checking development. This was not an opinion to which the tramway undertakers subscribed, but for the time being it commended itself to Parliament. By sect. 27 of the Electric Lighting Act, 1882 (s), powers of purchase at the end of twenty-one years on terms similar to those contained in the Tramways Act, 1870, were conferred on the local authorities. Once more the only available local authorities were the sanitary authorities; and in any case the enormous extension of the use of electricity could not have been foreseen. It may be remarked that the period of purchase was subsequently greatly extended by sect. 2 of the Electric Lighting Act, 1888. [239]

The L.G.A., 1888 (a), carried the development of the county authority much further. It substituted for quarter sessions an elected council, formed on a model similar to that of municipal corporations, as the county authority for roads and a number of miscellaneous functions that quarter sessions had from time to time accumulated. The Act, however, by sect. 30 set up a new local authority beside the county councils, namely the standing joint committee of quarter sessions and the county council as the police authority for the county. The Act also took a further step in the creation of new local authorities by separating a number of large towns from the administration of the counties in which they were situated. This Act shows fairly clearly the growing difficulties of developing a system of local government adapted to the increasing weight and complexity of the functions to be discharged. It also shows the rapidly increasing power of the existing local authorities—a sign of their vitality. The difficulties of

(s) 45 & 46 Vict. c. 56. Repealed by the Electric Lighting Act, 1888, s. 2; 7 Halsbury's Statutes 702.

(a) 10 Halsbury's Statutes 686.

development were manifest in the adoption of the unsatisfactory arrangement, already so strongly condemned, of abandoning all attempts to maintain similar authorities of similar functions everywhere and of subdividing the powers of local authorities according to a number of not always consistent criteria. The result was that different types of authority might be found performing the same functions in adjoining areas; or, looking at it from another point of view, similar authorities in different areas might have different functions. These anomalies were not unconnected with the strength of the existing local authorities, to which reference has already been made. [240]

The necessity for paying further attention to the representation of the actual community rather than that of the inhabitants of an area chosen mainly for administrative convenience, was recognised in 1894. The L.G.A., 1894 (*b*), reformed the government of the rural parishes, setting up in all rural parishes a parish meeting consisting of the whole number of the parochial electors and setting up also, in all but the smallest parishes, an elected parish council. A certain number of direct administrative powers were conferred on the parish councils who, among other things, took over the civil functions of the vestries (*c*). These powers were miscellaneous in their nature and adapted to the peculiar circumstances of rural parishes. The expenditure of parish councils was severely limited by sect. 11 of the Act. Besides this limitation, sect. 12 forbade them to incur any expense or liability which would involve a loan without the consent of the county council who thus were given powers of supervision over their expenditure. The supervisory functions of the county councils were further increased by sect. 16. Under this section the parish councils were given wide powers of complaint to the county councils of the default of an R.D.C. to perform their functions, and the county councils, if they thought the complaint justified, were given large powers of doing the work themselves or having it done.

The Act renamed the urban sanitary authorities urban district councils, and the rural sanitary authorities rural district councils.

The constitution of these bodies was reformed and various further miscellaneous powers were granted them. Although the Act had created a new and additional class of authority in rural districts it abolished one existing class of authority by transferring all the functions of existing *ad hoc* highway authorities to the rural district councils (sect. 25 (1)). [241]

The power of the Local Government Board to apply provisions of the law relating to urban districts to rural districts was immensely extended by the Act (sect. 25 (5) (6)). The power given was very wide since action in this direction was left entirely in the hands of the Board who might act of their own motion, and the conferring power of the Board extended not only to powers but to "powers, duties and liabilities" of urban sanitary authorities under any Act.

In this connection it is worth mentioning that sect. 62 of the Act (*d*) provided for the absorption by the councils of boroughs and urban districts at their own will of various *ad hoc* authorities under old adoptive Acts and restricted the setting up for the future of such authorities in boroughs and urban districts. Some attempt was also made to

(b) 10 Halsbury's Statutes 773.

(c) See title VESTRIES.

(d) 10 Halsbury's Statutes 816.

simplify the boundaries of the districts of the various authorities. [242]

The penultimate step in the absorption of the elected *ad hoc* authorities was taken in 1902. The Education Act, 1902 (e), abolished the special authorities for elementary education, viz. school boards and school attendance committees, and transferred their functions to other local authorities. This transfer was made, however, on a plan which departed a long way from the principles of simplicity and singleness of control. The Act was passed amid bitter controversy, and the necessities of practical politics and of the complications of the service rendered a theoretically simple scheme impossible. Functions of large scope as to elementary education were conferred upon the councils of counties, county boroughs and of the larger boroughs and urban districts. The council of each county and county borough became the authority for higher education, but by sect. 3 councils of non-county boroughs and urban districts were given concurrent powers of assisting higher education. The Act shews a number of tendencies which have become more prominent since that date. The compulsory establishment by sect. 17 of a committee of the local authority to which the exercise of all the powers conferred by the Act on the appointing local authorities, except the raising of a rate or the borrowing of money, must stand referred was perhaps the most interesting example of one of these tendencies.

The appointing council were also given a large power of delegation to those committees. The committees themselves were to be constituted in accordance with a scheme made by the appointing authority and approved by the Board of Education, but sect. 17 contained certain provisions which were to apply to the constitution of all such committees. These were that the majority of the committee was to be appointed by the council and was to be composed of members of the appointing council except in counties where the county council otherwise determined. This part of the constitution, however, is not so interesting as the fact that part of the committee had to be composed of persons of special relevant knowledge who were appointed on the recommendation of outside bodies. There was a further and most important injunction, namely that some part of the committee must be composed of women. Large powers of control were given to the central authority, the Board of Education. [248]

1909 to Present Day.—The administration of the Poor Law had been receiving much attention at this period, and eventually a Royal Commission was appointed to inquire into the working of the Poor Laws and all measures of distress relief.

The Commission after sitting for four years produced an immense and interesting report in 1909 (f) which was accompanied by an equally large minority report. The recommendations contained in the report and in the minority report which were of a sweeping character were not embodied in any immediate legislation. The report and the minority reports are, however, of great interest. It may be remarked that the urgent need for codification and consolidation of the law was strongly expressed. The Commission pointed out the desirability of largely increasing the areas of administration of the authorities

(e) 2 Ed. 7, c. 42. Replaced by the Education Act, 1921: 7 Halsbury's Statutes 180.

(f) 1909, Cmd. 4499.

and suggested the areas eventually adopted in the L.G.A., 1929, namely counties and county boroughs. The most curious feature of the report is its bearing on the problems of central administration. The poor law authorities were undoubtedly the most strictly and elaborately controlled from the centre of all local authorities, yet upon questions which apparently would be most suitably answered by strict central control the system is severely criticised. The most surprising of these criticisms are that there was a want of sufficient control and continuity of policy by the Local Government Board and that there was too little real and too much mechanical uniformity. The report implies the danger of too much detailed control from the centre and the possible result of the exhaustion of the initiative of the central authority in the exercise of detailed control and its consequent inability to perform its true functions of "guidance and initiative." The value of this side of the central authorities' functions was stressed, and reference was made to the important part played by the Board's inspectors in this respect. [244]

Both the report and the minority report laid great stress on the importance to local authorities of highly skilled officers, the report in particular suggesting that the passing of an examination for entry to the higher posts was desirable. The minority report pointed out that it was essential to the administration of a democratically elected authority that it should be served by experts and that the responsible body should confine itself to the formulation of principles of action and to general control.

Both the report and the minority report agreed in the desirability of the abolition of the Boards of Guardians and the entrusting of their functions to the councils of counties and county boroughs. The report stated that they found that there was an absence of interest in poor law administration, and this they attributed to the fact that it stood in "no organic relation to the rest of local government." [245]

The report and the minority report differed so sharply on their views as to the future administration of the poor law that their other recommendations with regard to local government showed fundamental divergence corresponding to the divergence of the ends to be secured. The minority report envisaged a series of committees of the council, each responsible for one branch of the work, and a corresponding department, or division of a department, of the central Government who would control any funds allocated by the central Government to the aid of local authorities in respect of particular services. These last proposals entailed extensive reforms in the central Government, some of which were carried out in the creation of the Ministries of Health, Labour and Transport many years afterwards.

It is clear that by this time the idea that the local *ad hoc* authority should be absorbed by the local authority of general jurisdiction had now gained complete ascendancy. One cause of this was that owing to increasing knowledge the standard of service demanded by public opinion had risen as greatly as the power of providing it, and the result in this report is a demand for an increase in the resources of the local authorities to enable a greater specialisation in their performance of particular functions to be carried out. The idea of the statutory specialist committee was elaborated in the minority report and given its corollary of functionally divided central departments. [246]

A remarkable step was taken in the year in which the report of the Royal Commission on the Poor Laws was published by the passing of

the Development and Road Improvement Funds Act, 1909 (g). This Act was drawn in wide terms and authorised a body of commissioners to advance money by way of grant or loan through a Government department to (*inter alia*) public authorities to promote the economic development of the country. Owing to the operation of the doctrine of *ultra vires*, local authorities, however extensive their scope of operations, remained and remain *ad hoc* authorities for all their functions, however numerous and varied. Their jurisdiction, and by implication, their outlook, was confined to their own area. The interest of the central Government was confined to the maintenance of such a minimum of administration in every individual area that the country as a whole, consisting of the sum of these areas, should reach the necessary minimum in the national interest. This Act, by conferring powers of advancing money on a new central department, namely the Development Commissioners, to local authorities for general national, and not local, purposes, though it did not increase the powers of the local authorities, recognised explicitly the possibility of the action of individual local authorities being directed to the general national advantage.

Part II. of the Act, besides creating another new central department, namely the Road Board, conferred upon this department the power, not only of making advances to highway authorities, but of themselves constructing and maintaining new roads. The former of these two powers is another recognition of the principle above referred to. The latter of these two powers is an extension of it, in that a function hitherto exclusively performed by local authorities is thereafter to be co-ordinately performed by a central department in the general national interest. [247]

A new local authority was set up by the National Insurance Act, 1911 (h), the health insurance committee for each county or county borough. Each committee, with the exception of one-fifth of its members who were appointed by the council, and of other members appointed by the Insurance Commissioners, was composed of representatives of sectional interests particularly concerned in the working of the insurance scheme. The insurance committees were largely controlled by a new central authority established by sect. 57 of the Act—the Insurance Commissioners. The committees financed their administration out of the National Health Insurance Fund and not out of local funds, and their administration extended not to providing for the needs of their area in their own discretion, but to fulfilling certain defined duties to the satisfaction and under the control of the central authority. The whole system is therefore on quite a different footing to that of any other general system of local administration. It deals not with a local but a national service, and is designed to give local elasticity to what is in essentials a centralised system. In this aspect it marks a new and interesting experiment in administration. Further development was checked for a time by the war. [248]

At the end of the war the problems of central and local government were subjected to a wider official scrutiny than ever before or since. The Minister of Reconstruction appointed a large number of committees to examine various problems of administration, some of which intimately and fundamentally affected local government. One of these, the Local Government Committee, in their report (i) expressed themselves

(g) 9 Halsbury's Statutes 207.

(h) 1 & 2 Geo. 5, c. 55, s. 59.

(i) 1918, Cmd. 8917.

thus (*k*): "We have adopted for our guidance the principle of concentrating as far as possible in one local authority for each area the administration of all expenditure from public funds." This was the most extreme expression of the doctrine of unification of local authorities which had ever been made by an official body and is somewhat curious at a date when the doctrine had become so very largely at variance with the actual development of local government. The committee, however, applied it to the administration of the poor law, the one field in which there still was clearly room for its application. They recommended strongly the abolition of Boards of Guardians and the transfer of their functions to the county and county borough councils as already recommended by the Royal Commission on the Poor Laws in 1909. The committee also recommended that treatment for the sick and infirm should become not a poor law but a public health function. In introducing the Bill that became the M. of H. Act, 1919, the Minister of Reconstruction said that the Government agreed with the latter recommendation of the committee and regarded its implementation as urgent. This recommendation was, of course, carried out by the L.G.A., 1929. As a consequence of the labours of another of these committees, namely the Committee on the Machinery of Government, in 1919, three new Ministries and a new central department were established—the M. of H., the M. of T., the M. of A. & F. and the Electricity Commissioners (*l*). [249]

The first three of these were developments of existing departments, in the case of the Ministries of Transport and Health by the amalgamation of the functions of existing departments, and in all three by the raising of the status of the departments. The intention of the Acts was a reorganisation on functional lines, roughly on the lines recommended by the minority report of the Royal Commission on Poor Law, with regard to the central Government. The machinery of transfer in the cases of the Ministries of Transport and Health was mainly by means of Orders in Council under the respective Acts, thus giving great flexibility to the organisation, as the definition of the functions to be transferred was left to the Orders.

A curious provision in sect. 3 (3) of the M. of H. Act, 1919 (*m*), deserves notice. The latter half of this sub-section declared that it was the "intention of this Act" that, if in the future the Poor Law were revised and the functions of boards of guardians redistributed among other authorities, there should be a distribution of the Poor Law functions, other than health functions, of the Minister of Health among other Government departments, in so far as they could be more conveniently performed. [250]

The establishment of the M. of T. and of the Electricity Commissioners, the two most obviously functional of the four, directly affected those services, namely trams and electric lighting, which had been over the previous half century so largely absorbed by the general public health authorities. This functional organisation has proceeded

(*k*) Para. 7. See also Part XII. of the report, "The Importance of Complete Unification."

(*l*) By the M. of H. Act, 1919, the M. of T. Act, 1919, the M. of A. & F. Act, 1919, and the Electricity (Supply) Act, 1919; 3 Halsbury's Statutes 416, 422, 451; 7 Halsbury's Statutes 754. The Bills, which were approved by the Committee, were prepared before the report of the Committee (1918, Cmd. 9280) was published.

(*m*) 3 Halsbury's Statutes 418.

slowly ever since. Power was given (*n*) to the Electricity Commissioners to establish new districts designed with regard to efficiency and administrative convenience for the purposes of the Act and to set up in them a new form of *ad hoc* authority, namely joint electricity authorities representative of local authorities and special interests. [251]

The standards of service demanded by the public in regard to the functions of local authorities continued to rise and rise more rapidly than ever before. The necessity for larger areas of charge and of administration became correspondingly more apparent. This tendency had led to many functions being thrown by new legislation on the larger local authorities, namely the county councils. At the same time the rapidly increasing urbanisation of the population had the effect that larger numbers of people sought an urban nucleus both for their work and their recreation, while enormously improved transport facilities made it possible for them to gain this end even though they lived at some distance from a large urban centre. The towns had therefore increased very greatly in area, and the outgrowths beyond the old urban district or borough boundaries, being of considerable rateable value, were often the subject of bitterly contested struggles between the town authority (borough or U.D.C.) who wished to include them in their area and the authorities of the surrounding areas who wished to retain them. For a long time all these tendencies had resulted in frequent attempts on the part of the county boroughs to take into their areas more and more of the counties, while local patriotism, nourished on the increasing intensity of urban life, together with the desire to escape contribution to the administration of rural areas in which they were not interested, led to numerous successful attempts on the part of growing towns to attain the status of county boroughs. But these attempts either to extend the area of an existing county borough or to be constituted a county borough, if successful, made administration in the counties increasingly difficult and therefore led to constant friction since the attempts were strenuously resisted by the county councils. [252]

In 1923 a Royal Commission was appointed to inquire into the law and procedure relating to the creation and extension of county boroughs, and the effect of such creations or extensions on the administration of the councils of counties, non-county boroughs, urban and rural districts, to investigate the relations between these latter authorities and to make recommendations as to their constitution, areas and functions. The Commission produced a first report in 1925 (*o*), dealing with the creation and extension of county boroughs and containing an invaluable summary of local government functions. This first report did not go at all deeply into questions of principle affecting local government, but confined itself to recommending the narrowing of procedure for the constitution of county boroughs and a raising of the minimum of population entitling a borough to apply for constitution as a county borough by 50 per cent. (*viz.* to 75,000) (*oo*). Some rather curious information is to be derived from a study of the report. The Commission reported that the evidence was in agreement that the wishes of the inhabitants could not be conclusive on the

(*n*) By ss. 5, 6 of the Electricity (Supply) Act, 1919. S. 5 was amended by the Electricity (Supply) Act, 1926 (s. 36 of that Act). For ss. 5 (printed as amended) and 6 see 7 Halsbury's Statutes 756.

(*o*) 1925, Cmd. 2506.

(*oo*) Given effect by the L.G. (County Boroughs and Adjustments) Act, 1926.

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question of extensions of county boroughs, which shows the influence of the difficulty that the community is not necessarily the best unit from the point of view of pure administration. The Commission, however, attached great importance to the wishes of the inhabitants. This difficulty of the question of the best area of administration appears in a different form in the question of how far in extending county boroughs regard should be paid to the fact that the county borough performed certain services in the area sought to be acquired. The Commission rejected the argument that serious regard should be paid to the provision of such services, but thereby recognised the difficulty that the areas of actual administration of different services might (and frequently did) differ first from one another and secondly from the electoral and local taxation area of the administering authorities.

The ideal areas of administration of the various services would, of course, differ much more widely.

It may be mentioned that the report shows evidence of some distrust of certain features of ministerial procedure in adjudicating between the conflicting claims of local authorities. [253]

The second report (*p*), which was published under the shadow of impending changes in the law, laid stress mainly on the perennial consideration that the area of charge for certain services should be enlarged. It recognised this difficulty of the constant desirability of increasing the area of charge and also the difficulty caused by the fluctuating character of the population in areas by recommending that a general review of county districts and parishes should forthwith be undertaken and repeated at intervals. The county councils' position as general supervising authorities was strengthened, as the review was to be entrusted to them, though the decision on their recommendations lay with the Minister of Health. The Commission recommended that the supervisory powers of the county councils should be still further extended by leaving the county councils free to report adversely on the public health administration of county districts and by requiring the Minister of Health to take action on the receipt of such a report, even by transferring functions to the county council in cases where the Minister thought it desirable. [254]

The third and final report (*q*) published in 1929 dealt mainly with matters of disconnected detail. It referred strongly to the necessity for codification and consolidation of the law. The appointment of persons who were not members of the appointing local authorities to membership of committees of the local authorities, a practice frequently favoured by Parliament, came in for some adverse criticism at the hands of the local authorities themselves. There was a recrudescence of the determined opposition of local authorities to central domination in the opposition by local authorities to the appointment of members of county agricultural committees by the M. of A. & F. and even to the principle of statutory committees. This opposition was endorsed by the Commission, though in the latter matter no legislative effect has been given to the recommendation. This is scarcely surprising since the principle of the statutory committees appears to have been intermittently but frequently favoured by Parliament ever since the establishment of the watch committees of the borough councils by the Municipal Corporations Act, 1835 (*r*).

(*p*) 1928, Cmd. 3213.
(*r*) 5 & 6 Will. 4, c. 76.

(*q*) 1929, Cmd. 3436.

The question of qualification, status and security of officers was discussed at some length but resulted in very little but a statement of difference of opinion. [255]

The difficulty of the lack of correspondence between the areas suitable for local government and the areas suitable for the administration of various services was emphasised in the recommendations as to increased co-operation between local authorities. The three reports, while taking no very wide ground of principle and confining their recommendations mainly to an enormous number of detailed recommendations, contain scattered comments, chiefly in the shape of remarks on evidence, which are of great value on the matters which have been referred to in this article.

During the sittings of the Commission, the Poor Law had been consolidated by the Poor Law Act, 1927 (s). But this and the Education Act, 1921 (t), were the only considerable measures of consolidation of the law affecting local authorities that had been undertaken since 1875, despite the strong comments that had been made by body after body that had considered questions of administration for nearly half a century. [256]

In 1929 a step was taken, which though of the first importance in local government, was perhaps of even more importance in public health, namely the passing of the L.G.A., 1929 (u). This Act resulted in the absorption of what were then the last *ad hoc* elected authorities, the boards of guardians. This represents the last victory of the principle of concentrating local administration in the hands of one elected authority.

The operation of the principle had, however, been somewhat obscured by the establishment and increasing strength of the dual system of (1) county councils and (2) county district councils. The L.G.A., 1929, deepened and reinforced this dualism by transferring the administration of the Poor Law wholly to the county and county borough councils and by transferring also some of the functions of the district councils to the county councils. The principle itself was to receive a setback in the following year by the passing of the Land Drainage Act, 1930 (x), which provided for two new groups of *ad hoc* authorities, one of which (the drainage boards other than catchment boards) was to be elected directly. [257]

An important result of the L.G.A., 1929, was the complete review of county districts which was undertaken in the years immediately succeeding its passing. The principles on which this review was conducted are set out in a memorandum (a) issued by the M. of H. in September, 1929. In this memorandum stress was laid on the necessity for being thorough and systematic, and the objects to be achieved were described as being to secure that districts should form "good local government units readily and economically administered and with sufficient financial means to carry out their duties in a satisfactory manner." The wishes of the inhabitants were to be considered and also questions of community of interest, but it was emphasised that both these considerations must be subordinated to the interests of

(s) Replaced by the Poor Law Act, 1930; 12 Halsbury's Statutes 968.

(t) 7 Halsbury's Statutes 130.

(u) 10 Halsbury's Statutes 883.

(x) 23 Halsbury's Statutes 529.

(a) Memorandum, L.G.A., 24. Printed on pp. 3518—3537 of Lumley's Public Health, 10th ed.

good government. It would seem that in a democratic system, if it is to remain democratic, these two considerations are necessary conditions of good government, but this appears to have been disregarded. The result of the reviews was a decrease in the numbers of the urban and rural districts (*b*) and an enlargement of the average size of those remaining. Parochial boundaries were also altered on a large scale. [258]

In 1933 a further step was taken in the detachment from local authorities of general jurisdiction of some of the services provided by them, and the reorganisation of these services on a functional basis, by the passing of the London Passenger Transport Act, 1933 (*c*). This Act, which had long been under negotiation with the local authorities and private undertakers concerned, set up a new *ad hoc* authority, appointed on a novel system, to whom was committed a monopoly of the provision of passenger transport in London and a wide area around it. Though this experiment only affected a small part of the area of England and Wales, the importance of the local authorities affected and the vast size of the undertaking created make it of the greatest interest.

The long desired codification of the law has been carried a step farther as a result of the work of the Local Government and Public Health Consolidation Committee. Their first Interim Report (*d*), resulted in the passing of the L.G.A., 1933 (*e*). This committee published a second report on January 10, 1936 (*f*), in which a consolidation of the enactments relating to Public Health was proposed, and the P.H.A., 1936, was passed in July, giving effect to the Committee's recommendations. [259]

Conclusions.—Despite the complexity and confusion of the subject, it appears to be possible to distinguish certain tendencies, which, though often contradictory, have, throughout the period under review, frequently resulted in new forms of administration in the development of local government, which has been described in all too brief a fashion in the foregoing pages. These tendencies may be summarised as follows:

(1) The control of directly elected bodies over local services with divergent tendencies to expert administration referred to in paras. 4, 5, 6.

(2) The concentration of the control of local services in the hands of one directly elected body, with a contrary tendency, becoming more and more marked, to interpose a larger controlling authority between the immediately responsible authorities and the central government. These intermediate bodies have come to exercise a large amount of jurisdiction co-ordinate with that of the smaller authorities though distributed on no very intelligible principle. The tendency to entrust the larger authorities direct with administration has been due mainly to the tendency next mentioned.

(3) The increase of the area of local authorities. This has been due to two causes, first the desire to improve the financial resources of individual local authorities and to improve their power of specialised administration, and secondly to the tendency mentioned in para. (4).

(4) The ever increasing difficulty of harmonising the local govern-

(b) Non-county boroughs might be altered in area but not abolished: see s. 40 (2); 10 Halsbury's Statutes 917.

(c) 26 Halsbury's Statutes 744.

(d) Dated March 8, 1933, Cmd. 4272.

(e) 26 Halsbury's Statutes 295.

(f) Cmd. 5039.

ment areas with the convenient areas for administering particular services. This difficulty has so far been met partly by a blind increase in the size of authorities, and by the establishment of *ad hoc* authorities on functional lines appointed on various systems and sometimes consisting entirely of experts. These *ad hoc* authorities control areas chosen solely for their suitability for the administration of the functions concerned. They stand in some functional relationship to different central departments but their relationship to local authorities of general jurisdiction is sometimes ill defined. The serious incidence of this problem is felt everywhere, but is most clearly seen where its intensity is greatest, namely in and around London (*g*).

(5) The statutory establishment of committees of local authorities for the administration of particular services on functional lines.

(6) The partial staffing of specialist committees of local authorities by the appointment of experts who are not members of the appointing authorities.

(7) A division of the central Government on functional lines.

(8) The recognition of local authorities as performing functions which are not only of national importance in that they must be performed adequately in every locality, but in that they must be performed by the authority in the national interest as well as in that of the locality over which the authority has jurisdiction.

(9) An immense increase in the interest in and control of local administration by the central Government. This has been most interestingly accompanied by a development in the technique of central co-operation with local authorities. While powers of control both formal, through, for example, the district auditors, and informal, through, for example, the immense financial assistance granted to local authorities by the central Government, have greatly increased, insistence has been laid more and more on advice, help, and stimulation rather than compulsion.

(10) The gradual appearance of a special system of law applicable to administrative matters. The appearance of the system coincides with a certain restriction of resort to ordinary courts of law and an increasing use of a machinery outside the ordinary courts for decision of administrative questions (*h*).

(11) The improvement in the status and qualifications of the officers of local authorities (*i*). [260]

All these tendencies which are now fully understood, though not necessarily approved, have manifested themselves over a long period in Acts of Parliament, orders and administrative action which most frequently were dictated, not by any theory, but by the necessities of some particular problem at some particular period. It is true that there is and has been for over a century a great body of formed thought relating to local government, but this thought is divided in many respects into different schools which in some respects are fundamentally opposed. This opposition has continued for the last hundred years and has been one of the causes of the rather cautious, tentative and

(*g*) See title LONDON. The urgency of the problem has led to the creation of several *ad hoc* authorities in this district, for example the Metropolitan Water Board. However, this authority and other *ad hoc* authorities such as the Catchment Boards seem to have a closer affinity to joint authorities than the two mentioned in the text.

(*h*) See *post*, p. 120.

(*i*) See *post*, pp. 119, 120.

compromising manner of development of local government during that period. Immediate practical problems have been solved as they arose in an immediate practical way. The defects attaching to this otherwise excellent method are that the larger problems, of which the immediate practical problems are local or temporary manifestations, have not always been effectively perceived, and the immediate practical solution adopted is not always the best in relation to the problem as a whole, which is apt not to remain effectively in view. Moreover, problems which are immediately obvious have been solved, but problems not so obvious though quite as important have been allowed in the past, and are still being allowed, to go on increasing to the point of urgency before being dealt with. For example the friction that resulted from uncoordinated local initiative was not dealt with effectively till 1872 (*k*). Another example is the fact that the status of the poor law authorities, which had given rise to discussion for years before the Royal Commission of 1905-1909, was not altered, even in accordance with those recommendations in which both the report and the minority report agreed, till the passing of the L.G.A., 1929. Lastly the codification and consolidation of the constantly growing body of the law has only been carried out many years after it has reached a point of confusion at which its lack of intelligibility forms a serious handicap to administration. [261]

At the present day several of these less obvious problems have reached a point of some acuteness. They are in all cases well known, and in some cases have been the subject of examination and recommendation by bodies of high authority.

The most important and urgent of these problems is the difficulty of combining the principle of self government and democratic education and initiative with the type of administration made necessary by the following causes: (1) the importance of securing a national minimum standard of service, (2) the growing knowledge both of the wide repercussions of matters which had previously been supposed to be of importance only to limited areas or sections of the population and of the advantage of large-scale operation, and (3) the great changes in the structure of society brought about by improvement in transport. These unsolved problems connected with the difficulties of reconciling the principle of self government and democratic education and initiative with other demands of administrative efficiency are fundamental, and are increasing to a point at which it is doubtful whether simple compromise is any longer capable of solving them. The first necessity of democratically elected bodies is that they should represent what is, in fact, a community. This is obvious on *a priori* grounds and has been proved by a hundred years of experience. Since the principle that the area of jurisdiction, the area of local taxation and the area of election should coincide has been universally adopted (it is not suggested that any other principle could have been adopted) it is necessary from the democratic point of view that this area should coincide with that inhabited by a community in fact. There is no reason why such an area should be large enough to satisfy the demands of administrative efficiency in general or should coincide with any of the differing areas most suitable for the administration of particular services. A further difficulty is to be found in the fact that the community, owing

(*k*) With the particular exception of the prevention of the formation of small local government districts by the L.G.A., Amendment Act, 1863 (see *ante*, p. 102).

to improvements in transport, is rapidly tending to formations less simply geographical than of old, and in many ways to formations not geographical at all. The extreme difficulty of determining what is in fact happening has led to the question of community being generally ignored except by the Privy Council in considering the creation of boroughs since the creation of parish councils and parish meetings by the L.G.A., 1894. The strength of the community acting through the local authorities is seen in the volume of local legislation, in the struggles between local authorities, and in the great strength of the opposition offered by local authorities to proposals of which they disapprove. At the same time the difficulties of administrative area, in so far as they have been solved at all, have been solved as they arise by simple increases of individual areas and to a comparatively slight extent by joint action and the creation of new *ad hoc* authorities. The process of increase of area, especially outside the boroughs and under the reviews consequent on the L.G.A., 1929, has resulted in a movement of the local government units still farther away from considerations of community. This movement, together with the spreading and breaking up of communities due to transport improvements, has proceeded so far that a large number of local government units have become rather administrative units than units of communities. These events have taken place at a time when it is more important than ever before that the private citizen should be closely linked with his local authority. The complexity and specialisation of administration has made it impossible for the general community even to formulate precise demands, as in past times it could formulate a demand, say, for a drainage system, and consequently general demand has necessarily become simply an assertion of an unformulated lack. It is therefore more than ever necessary that the elected authority should be responsive to this unformulated demand. The elected authority must also be so organised as to be able first to translate unformulated demand into defined demand, and secondly to enforce the satisfaction of the demand. This last function is not always satisfactorily fulfilled by an authority which is itself directly responsible for the administration under criticism. On the purely administrative side the difficulties involved in the existence of local authorities too weak financially and with too small an area to perform their functions efficiently have probably been solved by the county reviews consequent on the L.G.A., 1929, and by the huge grants made to local authorities by the central Government. But the more efficient the authorities become, the more diverse are the functions likely to be entrusted to them. As the functions become more diverse the likelihood of their area corresponding to any of the areas suitable for the administration of the various services entrusted to them diminishes. For this last problem no solution is to be found in mere increase of size. The increase in the complexity of administration has also made it more difficult for the councils, composed as they are solely of unpaid members led to seek the position of councillor only by motives of public interest and an honourable desire for the prestige conferred upon those who are eminent in the public service, to understand, formulate and carry out the policies most appropriate to the services. This difficulty makes it necessary to rely on the help and advice, on the one hand, of skilled officers and, on the other hand, of the departments of the central Government. [202]

In response to the necessity for highly skilled officers there has been an immense development in the qualifications possessed by officers

in the local government service. Their numbers have necessarily enormously increased. As might be expected when an organisation grows without any general plan of staffing to a point at which it employs scores of thousands (*l*) of highly skilled officers, certain difficulties have made themselves apparent. That the present position is not wholly satisfactory to outside view may be seen by a perusal of the report referred to in note (*l*).

With regard to the departments of the central Government there are also certain difficulties. Their organisation on functional lines as recommended by the Machinery of Government Committee (*m*) is not yet perfect, and this imperfection is necessarily reflected in a certain want of clear and co-ordinated policy in those matters with which those parts of the organisation that are imperfect are concerned.

The great complexity of administration has for some time past rendered it impossible for the old machinery of Parliament and the Law Courts to deal with it unaided. On the one hand Parliament has to confine itself to framing general instructions in statutes, leaving to a department to implement those instructions by the production of rules, orders and regulations. On the other hand the Law Courts, as at present organised, prove very often an unsuitable tribunal before whom to take differences of opinion in administrative matters. Central Government departments have therefore acquired many judicial and quasi-judicial powers.

The whole of this development of subordinate legislative power and of judicial and quasi-judicial decision was considered by the Committee on Ministers' Powers (*n*). The committee were of opinion that the whole position was in need of clarification and regularisation. [263]

The system of assistance from the central departments has been much improved by the establishment of statutory committees and also of corresponding central departments. However, the results of a large development of this system, apart from the opposition attendant on such an attempt, would seem to be the elimination to almost a corresponding extent of the local authority itself. This result is the more likely since the difficulties of staffing the committees and the desirability of recruiting expert membership may lead to the further development of the principle of co-optation. At the same time the exercise by the local authority of control over its statutory committees is bound in time to be affected by the fact that so large a proportion of its own income is given to it by the central Government. It is not improbable that in the future a local authority might find it somewhat difficult in these circumstances to discipline a statutory committee whose policy, highly technical in any case, had the sympathy of the appropriate central department.

It is this difficulty of combining the community with suitable administrative areas for particular services which has led, in the administration of transport and land drainage, to an entire break-away from the system of the ordinary elected local authorities of general jurisdiction and the creation of special areas and special authorities whose

(*l*) 180,000 exclusive of teachers and police according to the report of the Departmental Committee on the Qualifications, Recruitment, Training and Promotion of Local Government Officers, published in 1984 (32-306).

(*m*) 1918, Cmd. 9230. See *ante*, p. 112.

(*n*) See their report 1932, Cmd. 4060.

general relations with the elected local authorities have been left in a condition of most unsatisfying confusion. It is at all events possible that this process will be much accelerated in the near future (o) with, as its consequence, a fundamental change in the whole system of local government.

It is most undesirable that this change should be made entirely by uncoordinated experiment in detail as has happened too often in the past. It is greatly to be hoped that there will be evolved some general agreed criteria by which the coming changes may be tested and brought into harmony. [264]

(o) For example the whole system of local government on Tyneside is at present under consideration by a Royal Commission.

LOCAL GOVERNMENT (ADJUSTMENTS) ACTS

See FINANCIAL ADJUSTMENTS.

LOCAL GOVERNMENT AREAS

See AREAS OF LOCAL GOVERNMENT.

LOCAL GOVERNMENT ELECTORS

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See also titles :

CORRUPT AND ILLEGAL PRACTICES ; CORRUPTION IN OFFICE ; ELECTION AGENTS, LOCAL GOVERNMENT ;	ELECTIONS ; REGISTRATION OF ELECTORS ; REGISTRATION OFFICER.
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INTRODUCTORY

In sect. 305 of the L.G.A., 1933 (*a*), the term "local government elector" is defined as meaning a person registered as a local government elector in the register of electors in accordance with the provisions of the Representation of the People Acts. Prior to the operation of the Representation of the People Act, 1918 (*b*) (referred to below as the Act of 1918), the local government franchise was controlled (1) as to municipal boroughs, by the Municipal Corporations Act, 1882, (2) as to county councils by the County Electors Act, 1888, and (3) as to district councils and parish councils by the L.G.A., 1894. These different franchises were swept away by the Act of 1918 (*b*), and, by the Representation of the People (Equal Franchise) Act, 1928 (*c*) (referred to below as the Act of 1928), the local government franchise for women was assimilated with that for men, with the result that the qualifications for registration as a local government elector are now uniform in all local government areas in England and Wales, and apply to both sexes. [265]

Sect. 42 of the Act of 1918 (*d*) provides that the local government franchises enacted in that Act (*e*) shall, as respects local government elections within the meaning of the Act, take the place of all local government franchises existing at the passing of the Act, and the Sixth Schedule to the Act of 1918 (*f*) adapts the earlier statutes accordingly. References to local government electors registered under the

(*a*) 26 Halsbury's Statutes 465.

(*b*) 7 Halsbury's Statutes 548.

(*c*) *Ibid.*, 651.

(*d*) *Ibid.*, 572.

(*e*) This now means the franchises as amended by the Act of 1928 ; 7 Halsbury's Statutes 651.

(*f*) 7 Halsbury's Statutes 588.

Act of 1918 are, so far as local government elections and the right to vote at any such elections are concerned, substituted for any references in any other Act to local government electors, county electors, burgesses, parochial electors, or to any persons entitled to vote at any local government election; local government electors so registered are for all purposes, whether statutory or not, in the same position as any such persons. The local government register, compiled under the Acts of 1918 and 1928, is substituted for the local government register of electors, the burgess roll, the county register, the register of parochial electors, and any other register of persons entitled to vote at a local government election. [266]

QUALIFICATIONS

General Principles.—The qualifications for registration as a local government elector were set out in sects. 3 and 4 (3) of the Act of 1918, but these provisions are repealed and replaced by sect. 2 of the Act of 1928 (g), which incorporates in the Act of 1918 the following section in substitution for the repealed provisions:

"3. A person shall be entitled to be registered as a local government elector for a local government electoral area (h) if he or she is of full age and not subject to any legal incapacity, and

"(a) is on the last day of the qualifying period (i) occupying as owner or tenant any land or premises in that area; and

"(b) has during the whole of the qualifying period so occupied any land or premises in that area, or, if that area is not an administrative county or a county borough, in any administrative county or county borough in which the area is wholly or partly situate; or

"(c) is the husband or wife of a person entitled to be so registered in respect of premises in which both the person so entitled and the husband or wife, as the case may be, reside.

"Provided that:

"(i.) for the purposes of this section a person who inhabits any dwelling-house by virtue of any office, service or employment, shall, if the dwelling-house is not inhabited by the person in whose service he or she is in such office, service, or employment, be deemed to occupy the dwelling-house as a tenant; and

"(ii.) for the purposes of this section the word tenant shall include a person who occupies a room or rooms as a lodger only where the room or rooms is or are let to that person in an unfurnished state; and

"(iii.) for the purpose of para. (c) of this section, a naval or military voter who is registered in respect of a residence qualification which he or she would have had but for his or her service shall be deemed to be resident in accordance with that qualification." [267]

It will be seen that primarily qualification depends on occupation as owner or tenant, and not on residence. With the exception of the meaning attaching to the word "occupies" in proviso (ii.) dealing with lodgers, occupation for the purposes of this section means occupation by virtue of some legal or equitable interest in the property occupied, i.e. as owner or tenant entitled to possession of the premises, as against

(g) Printed as s. 3 of the Act of 1918 at 7 Halsbury's Statutes 550.

(h) Meaning the area for which any county council, municipal borough council, metropolitan borough council, district council, parish council or any other body elected at the passing of the Act of 1918 by persons on the local government register or register of parochial electors, is elected; Act of 1918, s. 41; 7 Halsbury's Statutes 570.

(i) Three months ending on June 1, and including that day (Act of 1918, s. 6, printed as amended by the Representation of the People (Economy Provisions) Act, 1920, s. 9, and Sched. III.; 7 Halsbury's Statutes 552).

all other persons (but subject to the provisions of sect. 7, *infra*, of the Act of 1918). In the case of the lodger, for whom special provision is made, the term "occupation" is used in a more general sense, and refers to occupation under a contract which would not carry with it a right of action for possession by a lodger wrongfully dispossessed, but which would merely give rise to a personal action for damages. Very slender evidence of a tenancy is at times adequate to support a claim based on occupation as tenant, but, *semble*, there must be the true relationship of landlord and tenant, although no written contract need exist and the tenant need not be rated as an occupier; on the other hand an exclusive right of user, as for example, to graze for a grazing season, or to shoot and take game, or to take gravel, but not accompanied by a right of occupation as tenant, would not justify a claim to be registered as a local government elector.

The expression "land or premises" is sufficiently wide to include all but incorporeal hereditaments, and there is no minimum value for the purpose of the local government franchise. [268]

The question of occupation is governed in certain respects by sect. 7 of the Act of 1918 (*k*). By sect. 7 (1) (c), not more than two joint occupiers may be registered in respect of the same land or premises unless they are *bona fide* engaged as partners carrying on their profession, trade or business on the land or premises. By sect. 7 (2) (l), the occupation of a house is not deemed to be interrupted, for the purposes of the Act, by reason only of the letting to or permitted occupation of the house as a furnished house (*m*) by some other person for part of the qualifying period not exceeding two months in the whole, or where the occupation of the person giving permission commenced more than six months before the last day of the qualifying period, for not more than four months in the whole during that period of six months. Further, occupation is not deemed to be interrupted by reason only of notice to quit a house being served and possession demanded by the landlord, and the foregoing express provisions do not affect the general principles governing the interpretation of the expression "residence" and cognate expressions. By sect. 7 (4), occupation of land or premises in a local government area does not qualify a claimant for registration as a local government elector, if the occupation commenced within thirty days before the end of the qualifying period, and ceased within thirty days after the commencement of the occupation. [269]

Occupation as tenant may arise even though the relationship of master and servant, or of employer and employee exists, and even although no rent is paid, or rent is paid by deduction from wages; thus a dockyard employee, who lived rent-free in a house in a dockyard, as part of his remuneration (*n*), colliers living rent free in the colliery-company's houses, and not entitled to any notice to quit (*o*), agricultural labourers living in farm cottages at a rent deducted from their wages (*p*), and a non-commissioned officer in the army occupying

(*k*) 7 Halsbury's Statutes 552.

(*l*) Printed *ibid.*, 553, as amended by the Act of 1926. Note that this exception is confined to houses; a dwelling-house includes any part of a house where that part is occupied separately as a dwelling-house (Act of 1918, s. 41; 7 Halsbury's Statutes 571).

(*m*) "Furnished" is not defined, but *semble* means a house reasonably ready for immediate occupation, without bringing in essential furniture.

(*n*) *Hughes v. Chatham Overseers* (1843), 5 M. & G. 54; 30 Digest 521, 1757.

(*o*) *Smith v. Seghill Overseers* (1875), L. R. 10 Q. B. 422; 30 Digest 521, 1761.

(*p*) *Marsh v. Fiske* (1889), 24 Q. B. D. 147; 20 Digest 26, 139.

rooms in barracks (*g*), have been held to occupy as tenants, under the repealed Representation of the People Acts. On the other hand, public officers who were obliged by the terms of their employment to occupy certain houses (*r*), labourers who were required as a term of employment to occupy farm cottages (*s*), and a militia storekeeper occupying a storekeeper's house on the instructions of his commanding officer (*t*), were held, under the earlier Acts, not to occupy as tenants. [270]

In the case of occupation by ownership it is essential that the land or premises occupied should be vested in the claimant; thus under the repealed statutes a distinction has been drawn between a charitable foundation for resident brethren where the land was vested in the corporation aggregate, and a similar foundation where the freehold was vested in the individual inmates (*u*).

A tenant for life so entitled under the Settled Land Act, 1925 (*a*), if in occupation of the settled property, appears to be qualified by occupation as owner, and not as tenant. [271]

Cases of difficulty may arise in the case of limited companies. A limited company, being a body corporate, is a separate legal entity, and occupation by such a company, whether public or private, does not confer any qualification on the directors or members of the company. Thus, where a director or member of a company lets premises to the company, and those premises are wholly occupied by the company, the owner of the premises is not qualified as an owner-occupier; but if there is a *bona-fide* reservation to the owner of part of the premises or a *bona-fide* letting by the company to a member or director of part of the premises, qualification arises as owner, occupier or tenant as the case may be (*b*). For the purposes of the normal qualification by occupation as owner or tenant of land or premises, it is immaterial whether the land or premises occupied forms a separate property or building, or is part of a larger building, or is in the same curtilage as land or premises on the occupation whereof some other person's qualification is founded (*c*).

The normal qualification by occupation as tenant is, however, extended to include two special classes, namely so-called service-tenants and lodgers. [272]

Service-Tenants.—The service-tenant is a person who is not a tenant in law, inasmuch as the relationship of landlord and tenant does not exist as between the employer and the claimant, but by virtue of

(*g*) *Atkinson v. Collard* (1885), 16 Q. B. D. 254; 20 Digest 25, 135.

(*r*) *Dobson v. Jones* (1844), 5 M. & G. 112; 30 Digest 521, 1758; and *Clark v. St. Mary, Bury St. Edmunds, Overseers* (1856), 1 C. B. (N.S.) 23; 20 Digest 46, 238.

(*s*) *Petersfield Case* (1874), 2 O'M. & H. 94; 20 Digest 26, 134.

(*t*) *Fox v. Daly* (1874), 44 L. J. (C. P.) 42.

(*u*) See *Heath v. Haynes* (1857), 27 L. J. (C. P.) 50; 20 Digest 19, 109 (occupation by brethren of hospital vested in corporation aggregate), and *Durant v. Kennett* (1860), 39 L. J. (C. P.) 17; 20 Digest 10, 110, but cf. *Fryer v. Bodenham* (1860), 38 L. J. (C. P.) 185.

(*a*) 17 Halsbury's Statutes 833.

(*b*) *Frost v. Caslon*; *Frost v. Wilkins*, [1929] 2 K. B. 138; Digest (Supp.).

(*c*) But subject to the question of joint occupation noted *supra* (Act of 1918, s. 7 (1) (c)); 7 Halsbury's Statutes 553, and subject to the special position of service tenants and lodgers dealt with *infra*. On the question of houses let off in separate dwellings, see *Kent v. Pittall* (1908), 72 J. P. 421; [1909] 1 K. B. 215; [1911] 2 K. B. 1102; 20 Digest 39, 241; 22, 126. The difficulties discussed in *Kent v. Pittall* are substantially removed by the definition of dwelling-house in Act of 1918, s. 41.

proviso (i.) to sect. 3 (see *ante*, p. 123), he is deemed to be a tenant for the purpose of qualification. If the legal relationship of landlord and tenant exists, the proviso does not apply. The application of proviso (i.) is limited to cases where the claimant (1) inhabits a dwelling-house by virtue of his employment, and (2) the dwelling-house is not inhabited by the employer. By sect. 41 of the Act of 1918 (d), the term "dwelling-house" includes any part of a house where that part is occupied separately as a dwelling-house, and, *primâ facie*, it might appear that the allocation of a bedroom to an employee would automatically give rise to a qualification as an occupier, and that the employee by virtue of proviso (i.) is deemed to occupy as a tenant. This assumption would, however, ignore the use in the proviso of the word "inhabits." A person who inhabits is not necessarily a person in legal occupation, and may be subject to the directions of some other person as to the rooms used and as to the times and mode of user. Thus a nurse employed in a hospital or public assistance institution, not inhabited by the governing body or by the local authority with whom the contract of service subsists, and who is allotted a bedroom by the officer in charge, and has the use of common dining and other rooms, can qualify for registration as a local government elector under the proviso (e). In admitting a claim of this nature it is necessary to accept the principles laid down in *Stribling v. Halse* (f), in which a shop-assistant, who had the exclusive use of a bedroom in a house provided, but not inhabited, by his employer, and had the use of a common dining room in which he took meals provided by his employer, was held to be qualified. This decision has been the subject of criticism, and was not followed in an Irish case (g), in which the facts were similar. Again in two later English cases (h), it was held that a police constable who was allotted for sleeping accommodation a cubicle, partitioned off from a larger room but not structurally separated therefrom by walls from floor to ceiling, and who had the use of common mess-rooms and other rooms in the same police-station, did not occupy separately a dwelling within the meaning of sect. 5 of the Parliamentary and Municipal Registration Act, 1878. [273]

A difficult question may arise when the claimant is employed in a domestic capacity or on a residential estate. Clearly an indoor domestic servant, inhabiting the same dwelling-house as the employer, i.e. sleeping, taking meals and living in what is structurally and actually the same house, would not be qualified as a local government elector under proviso (i.), but where the servant is allotted sleeping quarters in a separate building, and those quarters are under his own control, a qualification may arise, although the servant also uses the house inhabited by the employer, e.g. for taking meals in the servants' hall (i). Under the repealed statutes, a lodge-keeper living in a gate-lodge in

(d) 7 Halsbury's Statutes 570.

(e) In 1924, a considered decision was given by the registration officer for South-wark on an objection to a claim for registration as a local government elector made by a probationer nurse employed by the Governors of Guy's Hospital. The registration officer disallowed the objection, and placed the name of the claimant on the register of local government electors. Apparently the general principle involved has not been considered by the Court of Appeal.

(f) (1885), 16 Q. B. D. 246; 20 Digest 23, 133.

(g) *M'Quade v. Charlton*, [1904] 2 I. R. 383; 20 Digest 24, 134 *to*.

(h) *Barnett v. Hickmott*, [1896] 1 Q. B. 601; 20 Digest 25, 136; *Clutterbuck v. Taylor*, [1896] 1 Q. B. 305; 20 Digest 25, 137.

(i) *Cf. Laskey v. Michelmore* (1907), 71 J. P. 559; 20 Digest 24, 134; coachman occupying bedroom over stables and taking meals in employer's house.

respect of which the employer was rated by a single assessment including the house wherein the employer lived, was held to be entitled to registration in respect of the then service franchise (*k*).

The primary test applicable to claims under proviso (i.) is whether or not the claimant occupies the dwelling-house because he is required so to do, either by the express terms of his employment or by reason of the nature of his duties; if he is permitted, but not obliged, to occupy the dwelling-house so long as he performs certain duties, proviso (i.) does not apply (*l*), and the claimant must fall back on the normal qualification of occupier or owner or tenant. [274]

Lodgers.—The local government qualification as a lodger, under proviso (ii.) to sect. 3, *ante*, is applicable only where the lodger occupies a room or rooms let to him in an unfurnished state; and in determining whether a person is a lodger or a tenant-occupier regard must be had to the terms of the contract between the claimant and his landlord. The fact that the landlord resides in the same building as the claimant is not conclusive evidence that the claimant can only be a lodger (*m*). The primary test, as indicated *ante* at pp. 123, 124, is whether the claimant could sue for recovery of possession on being put out of possession unlawfully, or whether his only remedy would be a personal action for damages. A further test may be applied by inquiring as to the measure of control exercised by the landlord over the lodgings, and the extent to which the landlord provides service and attendance on the rooms let and the occupants thereof. Each case must be dealt with on the facts.

Qualification as a lodger appears to be possible where the claimant bases his claim on the letting to him of an unfurnished bedroom, and has the use of other rooms in the same building, in common with other persons. Where, however, the claimant is closely related to the occupier of the house in which he states that he lodges, it may well be that the relationship of landlord and lodger does not exist, and that there is merely a colourable arrangement for the purpose of securing a local government qualification (*n*). [275]

Naval, Military or Air Force.—The effect of proviso (iii.) to sect. 3 is to give a derivative local government vote to the wife or husband of a person registered as a naval or military voter (*o*), in the Parliamentary register, by virtue of a residence qualification which that person would have had but for his or her service; the proviso applies only to a qualification by residence in the qualifying premises in respect of which the husband or wife of the claimant of the derivative vote is qualified by occupation as owner or tenant (*p*).

(*k*) *Chesterton v. Gardom* (1912), 76 J. P. 78.

(*l*) *Dover v. Prosser*, [1904] 1 K. B. 84; 20 Digest 26, 140 (at p. 85, *per* Lord ALVERSTONE, L.C.J., in dealing with the corresponding words of Act of 1884, s. 3). In this case the claimant was a schoolmaster who was permitted, but not required, by his employers to live in a certain house during his employment; the claimant was therefore placed in Division I. as an inhabitant occupier, and entitled to a parliamentary and county council vote, instead of in Division II.

(*m*) *Kent v. Pittall* (No. 1), [1906] 1 K. B. 60; 20 Digest 21, 124.

(*n*) The principles governing "lodger" claims are discussed in the report of a decision of the Judge of the Clerkenwell County Court on an appeal in respect of a claim by a son residing in his parent's house, reported in 86 J. P. Jo. at p. 249.

(*o*) Includes air force, and certain other analogous employments. See Act of 1918, s. 3; 7 Halsbury's Statutes 531.

(*p*) There is no provision for voting as an absent voter at local government elections.

The qualifying period is three months ending on the first day of June and including that day; but a naval or military voter, or a person who has been serving as a member of the naval, military or air forces of the Crown at any time during the normal qualifying period, and has ceased so to serve, is allowed a qualifying period of one month ending on, and including, the first day of June (*g*). [276]

DISQUALIFICATIONS

A person cannot be registered as a local government elector if he, or she, has not attained full age (*i.e.* twenty-one years) on or before the last day of the qualifying period (*r*). As a person attains a specified age on the day preceeding the anniversary of the date of his birth, a person whose twenty-first birthday is on the second day of June, attains full age on the last day of the qualifying period (*i.e.* June 1), and, if otherwise qualified, is entitled to be registered. [277]

Further, by sect. 1 (1) of the Act of 1918 (*s*), a claimant must not be subject to any legal incapacity. This disqualification applies to aliens, persons of unsound mind, persons convicted of treason or felony, and persons disqualified under the statutes relating to corrupt and illegal practices. A peer is not disqualified for the local government franchise, nor is a peeress in her own right. [278]

Aliens.—A person who is not a British subject is not entitled to be registered or to vote as a local government elector (*t*). A person may be a natural born British subject, or a British subject by naturalisation, or by grant of letters of denization by His Majesty, or (in the case of a woman) may become a British subject by marriage. At common law all persons born out of allegiance to the British Crown were aliens, but this position was modified by several statutes, which, however, were repealed by the British Nationality and Status of Aliens Act, 1914 (*u*). But as by sect. 1 (3) of that Act the definition of natural-born British subject contained in sect. 1 does not affect the status of any person born before the commencement of the Act, reference must be made to the earlier statutes (*a*) when dealing with the case of a person born before January 1, 1915.

By sect. 1 of the Act of 1914 (*b*) as amended, the persons deemed to be natural-born British subjects are: (1) a person born within H.M. Dominions and allegiance, (2) a person born on a British ship, and (3) a person born out of H.M. Dominions, whose father was at the time of that person's birth a British subject, and who fulfils one or more of the following conditions: (i.) his father was born within H.M. Dominions, or was a naturalised British subject, or became a British subject by annexation of territory, or (ii.) his father was, at the time of the child's birth, in the service of the Crown, or (iii.) his birth was registered at a British consulate within the times mentioned.

(*g*) Act of 1918, s. 6; 7 Halsbury's Statutes 552. Printed as amended by the Representation of the People (Economy Provisions) Act, 1926.

(*r*) Act of 1918, s. 41 (7); 7 Halsbury's Statutes 571.

(*s*) Printed at 7 Halsbury's Statutes 548, as amended by s. 1 of the Act of 1928.

(*t*) Act of 1918, s. 9 (3); 7 Halsbury's Statutes 554.

(*u*) 1 Halsbury's Statutes 185.

(*a*) These are mentioned in note (*g*) on p. 445 of Halsbury's Laws of England, Vol. I., 2nd ed.

(*b*) The Act of 1914 as amended by the British Nationality and Status of Aliens Acts, 1918 and 1922, is printed at 1 Halsbury's Statutes 185.

The Act of 1914 (as amended by the British Nationality and Status of Aliens Acts, 1918, 1922 and 1933 (c)) regulates the status of British subjects by naturalisation, and preserves the Crown prerogative of granting letters of denization (d). [279]

The national status of married women is governed by sect. 10 of the Act of 1914, as replaced by sect. 1 of the Act of 1933 (e) which gives effect to an International Convention designed to reduce the possibility of a married woman having no nationality. The general principle laid down is that the wife of a British subject is a British subject, and the wife of an alien is an alien; but a woman who has married an alien, whether before or after January 1, 1915, and who was a British subject at the time of the marriage, does not cease to be a British subject by reason only of the marriage, unless by reason of the marriage she acquired the nationality of the husband. Similarly, where a husband during marriage loses his status as a British subject, the wife does not cease to be a British subject unless she acquires a new nationality by reason of the husband's acquisition of a new nationality, and, subject to statutory limitations, the wife may retain her British nationality by declaration. On the naturalisation of an alien after the end of the year 1933, the alien wife of the man so naturalised does not become a British subject, unless within twelve months from the date of the certificate of naturalisation she makes a declaration of her desire to acquire British nationality. Special provision is made for the resumption of British nationality by the British-born wife of an alien subject of a State at war with His Majesty.

In dealing with the qualification, as a local government elector, of a married woman whose husband is, or has been, an alien, it is necessary to ascertain the nationality law at all material times of the country of which the husband is or has been a subject, and to ascertain whether the wife has taken the statutory steps (in appropriate cases) to retain or obtain British nationality.

The status of women is dealt with in sect. 11 of the Act of 1914 (f), under which a woman whose nationality has been altered by marriage does not resume her original or pre-marriage nationality by reason only of the death of her husband or the dissolution of the marriage. [280]

Infant children of a British subject who becomes an alien, lose their British status, unless they do not become nationals of some other country under the nationality laws of that country, but such a child may resume British nationality within a year of attaining twenty-one years; children, by a former husband, of a widow who is a British subject do not lose British status on the marriage of their widowed mother to an alien (g).

It is important to observe that in dealing with a family born of an alien father, children born within H.M. Dominions and allegiance are British subjects, whilst those born outside those limits are aliens, and that, of those who are aliens, the females become British subjects on marrying British subjects, whilst a British woman marrying one of the males loses her British nationality and becomes an alien, unless

(c) For the last-named Act, see 26 Halsbury's Statutes 39.

(d) Certificates of Imperial naturalisation may be granted by the Governments of British possessions (Act of 1914, s. 8).

(e) 26 Halsbury's Statutes 39.

(f) 1 Halsbury's Statutes 193.

(g) Act of 1914, s. 12; 1 Halsbury's Statutes 193.

by the law of her husband's country she does not acquire his nationality by reason of marriage. [281]

Persons of Unsound Mind.—The name of a person who is so incapable mentally that there is no reasonable probability that he could tender a valid vote, should not be placed on the register of local government electors, but, *semble*, if he has lucid intervals in which he can act with sound mind and understanding, registration should not be refused if the claimant is otherwise qualified. By sect. 41 (5) of the Act of 1918 (*h*), a person who is an inmate or patient in any prison, mental hospital, workhouse, poorhouse or any other similar institution is not by reason thereof to be treated as resident therein, and normally such a person would not be qualified for the local government franchise, unless he is qualified by his occupation as owner or tenant of land or premises other than the institution. It is considered that *prima facie* any person who is found insane by inquisition, or who is certified under the Lunacy and Mental Treatment Acts, 1890 to 1930 (*i*), or under the Mental Deficiency Acts, 1913 to 1927 (*k*), should be regarded as disqualified. A voluntary patient received with his own consent under sect. 1 of the Mental Treatment Act, 1930, might perhaps be able to tender a valid vote, and, if otherwise qualified, should be registered as a local government elector. [282]

Persons Convicted of Crime.—By sect. 2 of the Forfeiture Act, 1870 (*l*), a person convicted of treason or of any felony which is punishable with death, penal servitude, or any term of imprisonment with hard labour, or imprisonment without hard labour for a term exceeding twelve months is disqualified for the purpose of registration and of voting until the sentence is served, or a free pardon has been granted (*m*). A felon released on licence or ticket-of-leave remains subject to disqualification until the sentence is completed. Conviction for misdemeanour does not operate as a disqualification. [283]

Corrupt and Illegal Practices.—A person is disqualified whose name appears in the corrupt and illegal practices list prepared by the registration officer under sect. 89 of the Corrupt and Illegal Practices Prevention Act, 1883 (*n*), or sect. 24 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (*o*). By sect. 2 of the Public Bodies Corrupt Practices Act, 1889 (*p*), the court may direct that a person shall be disqualified for registration as an elector for seven years, on a second conviction for an offence under sect. 1 of that Act.

See, further, the titles CORRUPT AND ILLEGAL PRACTICES; and CORRUPTION IN OFFICE. [284]

Public Assistance.—The receipt of poor relief or other alms does not disqualify a person from being registered or voting as a local government elector, nor does disqualification arise if such relief, etc.,

(*h*) 7 Halsbury's Statutes 570.

(*i*) 11 Halsbury's Statutes 17 *et seq.*; 23 Halsbury's Statutes 154.

(*k*) 11 Halsbury's Statutes 160–201.

(*l*) 4 Halsbury's Statutes 648.

(*m*) As to the automatic removal of disqualifications on pardon or completion of punishment, see s. 18 of Criminal Law Act, 1927, and s. 3 of Civil Rights of Convicts Act, 1928; 4 Halsbury's Statutes 457, 458.

(*n*) 7 Halsbury's Statutes 487.

(*o*) *Ibid.*, 521.

(*p*) 4 Halsbury's Statutes 719.

is given to a person whom the claimant for registration, or the voter, is liable to maintain (g). [285]

RIGHTS OF LOCAL GOVERNMENT ELECTORS

The L.G.A., 1933 (r), confers the following rights on local government electors.

Voting and Membership.—The right to vote, if so entitled under the Representation of the People Acts, at an election of a county councillor (sect. 12), borough councillor (sect. 26), district councillor (sect. 39), or parish councillor (sect. 53) (s).

A person who is a local government elector for the area of any such council is qualified to be a member of that council, unless otherwise disqualified (sect. 57). Only a local government elector for the area of the local authority concerned may institute proceedings against a member of a local authority, or a mayor of a borough, on the ground that he is disqualified for acting (sect. 84 (5)). [286]

Parish Meetings.—A local government elector for a rural parish is entitled to attend and participate in the business of the parish meeting (sect. 47 (1) and Sched. III, Pt. VI.). Any six local government electors may convene a parish meeting for their parish (Sched. III, Part VI., para. 2), and not less than five or one-third, whichever is the less, of the local government electors present at a parish meeting may demand a poll (*ibid.*, para. 5). Local government electors registered in respect of qualifications in a ward of a parish, or in a part of a parish, are entitled to attend and vote at a parish meeting for that ward, or part of a parish, and have the rights of convening a meeting or demanding a poll, as in the case of a parish meeting, for an entire parish (sect. 78). [287]

Alterations of Status or Area.—Where a petition is presented by an urban or R.D.C. for the grant of a charter of incorporation as a borough, and a scheme is prepared under sect. 132, a petition against the scheme may be presented by not less than one-twentieth of the local government electors for the area to which the scheme relates (sect. 132 (4)), and where such a scheme is in force, one-twentieth of the local government electors for the borough may petition His Majesty for an amending scheme (sect. 135).

On the submission for confirmation by the M. of H. of an order of a county council altering an urban or rural district or parish, a petition to disallow or modify the order may be presented to the M. of H. by not less than 100, or one-third of the total number, whichever is the less, of the local government electors for any county district, or for a ward thereof, or for a parish affected by the order (sect. 141 (5) (t)).

Not less than one-tenth of the local government electors for a rural parish may make a proposal to the county council for the division of

(g) Act of 1918, s. 9 (1); 7 Halsbury's Statutes 554. Cf. s. 59 of L.G.A., 1933; 26 Halsbury's Statutes 334, as to disqualification for membership of a local authority by receipt of poor relief.

(r) 26 Halsbury's Statutes 295.

(s) The register of local government electors is marked so as to prevent duplicate voting by a voter who is registered in respect of qualifications in more than one registration area in the same local government electoral area, e.g. qualifications in two parishes in the same county division.

(t) *Semble*, that a petition cannot be presented in respect of a ward of a rural parish unless the petitioners number not less than one hundred, or one-third of the electors for the entire parish.

the parish into wards for the election of parish councillors (sect. 52 (1)); or for the revocation or variation of an order already made (sect. 52 (3)). [288]

Housing.—Four or more local government electors for a rural district may complain that the R.D.C. have failed to exercise their powers under the Housing Acts, 1925 and 1930, or as to the failure of a county council to make a default order (*u*). As to complaints by four or more local government electors for any urban area of the failure of the borough or U.D.C. to exercise their powers under the same Acts, see sect. 52 (1) of the Housing Act, 1930 (*a*). By sect. 51 (2) of the same Act (*a*), any four or more local government electors for the area of a borough or district council may complain in writing to the M.O.H. that a dwelling-house is unfit for habitation, or that an area should be dealt with as a clearance area, and thereupon it becomes the duty of the M.O. to inspect and report to the council. [289]

Inspection of Documents. Audit.—A local government elector for the area of a county, borough, district or parish council, may inspect the minutes of the council (*b*) on payment of a fee not exceeding 1s., and may make copies or extracts, and he has the like right (without payment of a fee) in respect of orders for the payment of money made by the council (*c*). He may also inspect, and make copies of or extracts from, the abstract of the accounts of the council and of the treasurer, and any auditor's report; and copies of the abstract of accounts and report must be delivered to any such local government elector on payment of a reasonable fee (*d*). These provisions are also extended by sect. 283 (8) to the minutes and accounts of a parish meeting.

A local government elector for the area of a county, borough, district or parish council or parish meeting, is entitled, as a person interested, to inspect and make copies of or extracts from accounts and documents of the council or meeting deposited prior to audit (*e*). A local government elector for the area to which an audit relates may be present or represented at the audit, and may object to the accounts before the auditor (sect. 226), and he may object to an application to the High Court for relief from surcharge (sect. 281). He may also appeal from a refusal to surcharge if he objected at the audit, and may appear on proceedings in relation to a surcharge (*f*). [290]

Bills in Parliament.—On the publication of a resolution of a county, borough or district council to promote a Bill in Parliament, and its submission to the M. of H. for his approval, any local government elector for the area of the council may give notice in writing to the Minister of his objection thereto (*g*). The promotion of a Bill in Parliament by the council of a borough or urban district is subject under sect. 255 to the approval of the local government electors for the borough or district. [291]

(*u*) Housing Act, 1930, s. 35 (1), (4); 23 Halsbury's Statutes 423, 424.

(*a*) 23 Halsbury's Statutes 481.

(*b*) Including minutes of committees of the council which have been placed before the council for approval; *Williams v. Manchester Corpn.* (1897), 45 W. R. 412; 83 Digest 55, 336. See also titles dealing with various local authorities and their proceedings.

(*c*) L.G.A., 1933, s. 283 (1), (2); 26 Halsbury's Statutes 455.

(*d*) *Ibid.*, s. 283 (4).

(*e*) *Ibid.*, s. 224 (1); 26 Halsbury's Statutes 427.

(*f*) *Re Magrath*, [1934] 2 K. B. 415; Digest Supp.

(*g*) L.G.A., 1933, s. 254 (2); 26 Halsbury's Statutes 448.

Valuation.—As to the appointment by parish councils or parish meetings of two local government electors to act as members of a rural rating authority in relation to the valuation of rateable property in the parish, see sect. 1 (4) of R. & V.A., 1925 (*h*). [292]

LONDON

The position as defined in the Representation of the People Acts is the same in London as elsewhere, except as regards the City Corporation, as to which see title CITY OF LONDON. Of the provisions referred to *ante*, on pp. 181, 182, those in sects. 224, 226 and 231 of L.G.A., 1933, are alone applied to London by sect. 243 of that Act (*i*). [293]

(*h*) 14 Halsbury's Statutes 618.

(*i*) 26 Halsbury's Statutes 437.

LOCAL INQUIRIES

See INQUIRIES.

LOCAL LAND CHARGES

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See also titles :

ACQUISITION OF LAND ;
CONVEYANCING ;
PRIVATE STREETS ;

RESTRICTIVE COVENANTS ;
TOWN PLANNING SCHEMES.

Introduction.—Local authorities are given by statute a large number of powers of executing works on private property. In many cases the relevant Act gives the authority a right to recover from the owner or from successive owners the expenses of the works, and, on a failure by the owner to pay, creates a charge on the property.

Statutes of another class, a typical example of which is the Town and Country Planning Act, 1932 (*a*), enable an authority to impose restrictions upon the free use of land by private owners. Obviously, a purchaser of land must be able to learn what charges and restrictions exist before he takes a conveyance of the land. Apart from the register of charges under the Private Street Works Act, 1892, directed to be kept by sect. 13 (2) of that Act (*b*), the only way (before 1926) in which he could acquire this information was by inquiring of the local authority in whose district the land was situated, who were under no obligation to answer. This unsatisfactory position was remedied by sect. 15 of the Land Charges Act, 1925 (*c*), which provided for an elaborate system of registration of what are called in the Act "local land charges."

The scheme of the Act is that a local authority (*d*) shall be obliged to register all local land charges as defined by the Act, and a failure to register will have the effect of making the charge void as against a purchaser for money or money's worth of a legal estate in the land affected thereby. [294]

What Charges must be Registered.—The Act and the rules made thereunder (*e*) provide for the registration of four different classes of local land charges (*f*), viz. :

(A) What are called "general charges." These arise where the local authority have expended money on the land of a private owner for some purpose which, when the work is completed and some resolution has been passed or order made, will confer upon the authority a charge upon the land in question. Until the work is completed the amount of the charge cannot be ascertained. But in the meantime a general charge may be registered, which, as soon as the amount is ascertained or within one year thereafter, may be cancelled and a specific charge registered in its place. When registered, the specific charge has priority as from the date of registration of the general charge (*g*).

(B) What are called "specific charges." These are charges for an ascertained amount acquired by the authority under some public, local or private Act which take effect by virtue of the Act (*h*).

(a) 25 Halsbury's Statutes 470.

(b) 9 Halsbury's Statutes 201. This register is practically superseded by the register under the Land Charges Act, 1925.

(c) 15 Halsbury's Statutes 538.

(d) S. 15 extends to county councils, metropolitan borough councils, borough and district councils and any other local authority who acquire a charge under the Acts mentioned in sub-s. (1), or under any similar statute, whether public or local, or existing or passed in future.

(e) The Local Land Charges Rules, 1934; S.R. & O., No. 285; 27 Halsbury's Statutes 465.

(f) See r. 5.

(g) See the Land Charges Act, 1925, s. 15 (4); 15 Halsbury's Statutes 539. Registration of a general charge is permissive only. For the effect of registration as between vendor and purchaser, see *Re Middleton and Young's Contract*, [1929] W. N. 70; Digest (Supp.).

(h) These are the charges contemplated by s. 15 (1) of the Land Charges Act, 1925; 15 Halsbury's Statutes 538. The Acts under which the charge takes effect must be the P.H.As., 1875 to 1907, the Metropolis Management Acts, 1855 to 1893, or the Private Street Works Act, 1892, or an Act "similar" to these statutes, but may be an existing or a future Act.

(C) What are called "planning charges." These comprise any planning scheme, or any authority or resolution to prepare or adopt a planning scheme (i).

(D) What may be called "non-planning charges." These comprise prohibitions of or restrictions on the user or mode of user of land imposed by an authority by order, instrument or resolution, or enforceable by an authority under any covenant or agreement or by virtue of any conditions attached to a consent, approval or licence, not being (i.) one which operates over the whole of the area of the authority or of any contributory place, or (ii.) a prohibition or restriction enforceable by virtue of a planning scheme, or (iii.) one imposed by a covenant or agreement made between a lessor and lessee (k). The prohibition or restriction must be one which binds successive owners of the land. Conditions attached to dwellings under sect. 3 of the Housing (Rural Workers) Act, 1926, are non-planning charges (l). [295]

Duty of Keeping Register.—The general rule (m) is that the proper officer to act as local registrar is the clerk, or the person for the time being authorised to act as clerk, of the local authority in whose favour the charge is created, or by whom it is enforceable. It follows that a local land charge should, generally speaking, be registered by the authority who are entitled to the benefit of it. There are, however, three exceptional cases in which the proper officer is the clerk, or person authorised for the time being to act as clerk, of the authority (n) in whose area the land subject to the charge is situate, irrespective of whether or not they are entitled to the benefit of the charge. These cases are :

- (1) Planning charges other than those arising or created within the County of London (o) ;
- (2) Charges, other than planning charges, which are imposed by a council of a county or borough (including a metropolitan borough and the City of London), or urban or rural district, where the charge affects land outside the county, borough or (as the case may be) the district ;

(i) It matters not when the scheme was made, the authority given, or the resolution passed. This class is that first mentioned in s. 15 (7) of the Land Charges Act, 1925 ; 15 Halsbury's Statutes 539, as amended by the Law of Property (Amendment) Act, 1926. The Act itself applies only to town planning schemes made, and authorities or resolutions to prepare or adopt schemes. But r. 8 provides for the registration as planning charges of several matters (e.g. particulars of decisions as to interim development orders) which cannot be described as schemes or as authorities or resolutions. While it is obviously extremely convenient that these additional matters should be registered, it is thought that a failure to do so would not prejudice their validity for they are not local land charges within the meaning of the Act.

(k) This class includes instruments registered under s. 11 of the Ancient Monuments Act, 1931 ; 24 Halsbury's Statutes 203 ; see r. 5 (d). The class itself is that mentioned in para. (b) of s. 15 (7) of the Land Charges Act, 1925 ; 15 Halsbury's Statutes 539, as amended by the Law of Property (Amendment) Act, 1926. Here again (cf. note (i), *supra*), the class as defined in the rules would appear to be wider than that defined in the section. The former, for example, seems to include a covenant between lessor and lessee, which is expressly excluded by the latter. Only those non-planning charges should be registered which have come into existence since January 1, 1926.

(l) See Act of 1926, s. 3 (4) ; 13 Halsbury's Statutes 1167.

(m) See r. 4 (1).

(n) That is, the borough or district council.

(o) See *post*, p. 140.

- (3) Charges, other than planning charges, imposed by a registering authority other than one mentioned in para. (2) above. [296]

Contents of Register.—The register of local land charges must have an index in the form of a map (*p*) and must be divided into four parts comprising respectively general charges, specific charges, planning charges, and non-planning charges (*q*). Under sect. 10 (2) of the Act of 1925, a local land charge was to be registered in the name of the estate owner, but the Rules substitute a reference to the land affected for the name of the owner.

Part I. of the register, which comprises general charges, should contain a reference to the statute (*r*) under which the charge is proposed to be acquired, a sufficient description of the land which will be affected and the date of registration of the charge (*s*).

Part II., which comprises specific charges, should contain a reference to the relevant statute (*r*), a description of the land affected, the date of the charge and of its registration, and the amount of the charge (*t*).

The nature of the details to be entered in Part III., which comprises planning charges, depends upon whether the planning scheme has or has not come into operation. In the former case (*u*) the register should contain :

- (i.) A certified copy of the scheme ;
- (ii.) Where under the scheme a supplementary order has been made relating to land within the area of the authority in whose register the entry is made, a certified copy of the order ;
- (iii.) Where an order has been made under sect. 17 of the Town and Country Planning Act, 1932 (*a*), relating to land within the area of the scheme and within the district of the authority in whose register the entry is made, a certified copy of the order and of any declaration made by the Minister under the section ;
- (iv.) Either notice of the place at which inspection may be made of any map or plan referred to in the scheme, supplementary order, or order under sect. 17 (*a*), or a certified copy of such portion of the map or plan as relates to the area of the authority in whose register the entry is made ;
- (v.) Any requirements as to building lines or otherwise, consents, approvals or agreements made, given or entered into under the scheme or one of the orders ; and
- (vi.) The date of registration of the charge.

Where the scheme has not yet come into operation Part III. should contain (*b*) :

- (i.) A certified copy of the resolution or authority and of the Minister's approval (if any) ;

(*p*) Unless the M. of H. approves some other form.

(*q*) See r. 5.

(*r*) And, where in the opinion of the local registrar expedient, to the section, order, scheme, instrument or resolution under which the charge is, or (as the case may be) is proposed to be acquired.

(*s*) See r. 6.

(*t*) And where interest is payable the amount of the original charge and the rate of interest. See r. 7.

(*u*) See r. 9.

(*a*) 25 Halsbury's Statutes 400.

(*b*) See r. 8.

- (ii.) A copy of any special or general interim development order affecting land included in the resolution or authority ;
- (iii.) A certified copy of any order made under sect. 17 of the Town and Country Planning Act, 1932 (c), affecting land included in the resolution or authority and a certified copy of any declaration which may have been made under sect. 17 ;
- (iv.) Notice of the place at which inspection may be made of any preliminary statement or any proposed provisions of the scheme, or of particulars of any decisions (d) of the interim development authority, or of the Minister on appeal, affecting land within the area of the authority in whose register the entry is made ;
- (v.) Notice of the place at which inspection may be made of any relevant (e) map or plan or a certified copy of any relevant portion of such map or plan ; and
- (vi.) The date of registration of the charge.

Part IV. of the register which comprises non-planning charges should contain (f) a reference to the document (g) under which the prohibition or restriction is created and also to the statute under which the document derives its force ; notice of the place at which any such document (other than a public general statute) or a certified copy of such document may be inspected ; a sufficient description of the land affected by the prohibition or restriction ; and the date of registration of the charge. [297]

Amendments of Register.—When a local land charge has been discharged or become unenforceable, the registration should be cancelled. In particular, the registration of a general charge should be cancelled within at least fifteen months of the date on which the charge is ascertained and allotted (h). In the case of a specific charge, where a portion of the amount of the charge has been paid off by way of an instalment, the amount paid off, the date of payment and the balance left outstanding should be entered in the register against the charge (h).

The local registrar is also under a general duty to make any incidental modification of any entry in the register which may from time to time be necessary (h). In pursuance of this duty, where a planning scheme has come into operation, any general development order made in connection with the scheme should be entered in the register, together with notice of the place at which inspection may be made of any map or plan referred to in the order. [298]

Effect of Registration and Non-Registration.—A local land charge is void as against a purchaser for money or money's worth of a legal estate in the land affected by the charge, unless it is registered in the appropriate manner before the completion of the purchase (i).

(c) 25 Halsbury's Statutes 490.

(d) This applies only to decisions given after May 7, 1934 ; see r. 1.

(e) That is relevant to any of the resolutions, etc., mentioned under the preceding heads.

(f) See r. 10.

(g) That is the order, scheme, instrument, resolution, covenant, agreement or other document.

(h) See r. 13.

(i) Land Charges Act, 1925, s. 15 (1) ; 15 Halsbury's Statutes 538.

Moreover, a purchaser is not prejudicially affected by actual notice of any charge which is void as against him by reason of non-registration (*k*).

A charge for securing money (that is a general charge or a specific charge), when registered, takes effect as if it had been created by a deed of charge by way of legal mortgage, but without prejudice to the priority of the charge (*l*). The local authority entitled to the benefit of such a charge may, therefore, realise their security by way of sale or by the appointment of a receiver. The registration of a planning charge or a non-planning charge has the effect of binding subsequent owners of the land. [299]

Wrongful Registration.—The registration of some matter which, according to the Act and the rules, ought not to be registered, will be ineffective for the purpose of giving to the authority any rights which they would not have enjoyed if the registration had not taken place. Thus a condition attached to the grant of a licence by an authority that the licensee shall expend money on land is not a local land charge and should not be registered as such; for it is not a "prohibition of or restriction on the user of land." The question whether such a condition is enforceable against the land, or against its subsequent owners, depends entirely upon the terms of the statute under which it is imposed. If it is so enforceable under the statute, it may be enforced although it is unregistered. On the other hand, if it is not so enforceable, wrongful registration will make no difference.

From the point of view of the authority, the only danger of wrongful registration lies in the fact that the matter wrongfully registered in the local registry may be a charge (*e.g.* an "equitable easement") which ought to have been registered at the Land Registry; and the authority may be tempted to rest content with the local registration. In such a case the charge will be void under sect. 13 or sect. 14 of the Land Charges Act, 1925 (*m*), and the improper registration in the local registry will not save it.

It may be thought that a wrongful registration will be effective, inasmuch as it may (and probably will) have the result of fixing a purchaser with notice of the matter registered, and so causing him to take the land subject to a burden. A case in which this could happen is, however, difficult to imagine. If by virtue of the terms of a statute the matter is enforceable against the purchaser or is a burden on the land in his hands, it will generally be found to be so whether he has notice of its existence or not; and the fact that he has obtained notice by wrongful registration will be material only because it may enable him to rescind his contract with the vendor. If, on the other hand, the matter is not enforceable against a purchaser under some statute, it can be enforceable only under the general principles of equity; and in this connection the doctrine of notice has lost its practical importance owing to the provisions of the Land Charges Act, 1925. [800]

Priority Notices.—The rule that a charge is void as against a purchaser of a legal estate in the land affected, unless registered before

(*k*) Law of Property Act, 1925, s. 199 (1); 15 Halsbury's Statutes 378.

(*l*) Land Charges Act, 1925, s. 15 (2); *ibid.*, 538; which applies to local land charges the provisions of s. 11 of that Act. See *Payne v. Cardiff R.D.C.*, [1932] 1 K. B. 241; Digest (Supp.).

(*m*) 15 Halsbury's Statutes 537, 538.

completion of the purchase would, if it stood alone, have inconvenient consequences. On the one hand, some delay may have taken place between the creation of a charge and its registration and in the meantime a conveyance may have been taken. In such a case a charge would be rendered void by a conveyance subsequent in point of time to its creation. On the other hand, some delay must necessarily occur between the time when a purchaser searches the register and the time when he takes his conveyance, and he cannot be certain that during this interval a charge will not have been put on the register of which he knows nothing but to which nevertheless he will be subject.

To meet this position it is provided (n) that an authority who intend to register a charge may, at least two days (o) before the actual registration takes place, give a notice (p), called a priority notice, which must be entered in the register to which the intended application when made will relate. A failure to give such a notice makes it possible for a purchaser to take a conveyance with complete safety at any time within two days (o) of the day upon which he caused a search to be made of the register; for the rule is that where a purchaser has obtained an official certificate (q) of the result of a search, any entry which is made in the register after the date of the certificate and before the completion of the purchase does not, if completion takes place within two days from the date of the certificate, affect the purchaser unless the registration is made in pursuance of a priority notice entered on the register before the certificate is issued. [301]

Official Searches and Fees.—Any person may, on payment of the prescribed fee, lodge at a local land registry a requisition (r) that a search be made for entries of any matters or documents which are required to be entered in the register, and thereupon the registrar must make a search and issue a certificate setting forth the result (s). The

(n) See Law of Property (Amendment) Act, 1926, s. 4 (15 Halsbury's Statutes 548) applied to local land charges by r. 11, subject to the modifications contained in the rule. This Act overcomes the first of the difficulties mentioned above (so far as ordinary land charges are concerned) by providing that if registration of the charge takes place within fourteen days after the giving of the priority notice, the registration takes effect as if it had been made at the time when the charge was actually created. Suppose the order of events to be this: giving of a priority notice on the 1st, creation of charge on the 5th, conveyance to the purchaser on the 6th, registration of the charge on the 7th. If the charge were an ordinary land charge, the date of registration would be deemed to be the 5th (*i.e.* the date of the actual creation), and the charge would be valid against the purchaser notwithstanding that he took his conveyance before its registration. One of the modifications made by r. 11 in the application of the section to local land charges is that even where registration is made pursuant to a notice, the date of registration to be noted in the register is the actual day of registration.

(o) Excluding Sundays and days upon which the registry is not open to the public.

(p) The notice should be in the form prescribed by the Land Charges Rules, 1926; S.R. & O., 1926, No. 737; 15 Halsbury's Statutes 609. But where the contemplated charge is one which will have to be entered in the register of the authority entitled to the charge, the entry in the register of the particulars of the charge amounts to the giving of a priority notice,—see r. 11 (1) (b) of Local Land Charges Rules, 1934.

(q) As to which, see *infra*.

(r) The requisition must be in writing, signed by the person making it or by his solicitor. It must define the land by means of a plan drawn to scale (which should be submitted in duplicate), or by any other means sufficient to enable the land to be identified. See r. 15 and the First Schedule to the Rules.

(s) Land Charges Act, 1925, s. 17 (1) (2), and r. 15.

certificate should extend to registrations (including priority notices) effected during the day (*t*) of the date of the certificate, and should not be issued until the registry is closed for registration on that day. In favour of a purchaser or an intending purchaser an official certificate is conclusive according to its tenor. A solicitor who obtains a certificate is not answerable in respect of any loss that may arise from any error it may contain, nor are trustees, executors, agents or other persons in a fiduciary position, for whom the solicitor may be acting, or persons who obtain a certificate without a solicitor (*u*). Applications for a personal search may also be made under r. 15 (6).

The fees payable for the registration, modification or cancellation of entries and for searches and official certificates have been prescribed and are to be found in the second schedule to the rules. [302]

London.—The enactments already mentioned in this title, and the Local Land Charges Rules, 1934 (*a*), extend to London. As to the officer who acts as local registrar, see *ante*, p. 135, but a modification is made by proviso (ii.) to r. 4 (1). By this proviso, for planning charges arising or created within the County of London (excluding the City) the proper officer to act as local registrar is the clerk, or the person for the time being authorised to act as the clerk of the L.C.C. [303]

(*t*) Applications for registration delivered during the hours in which the office is open for registration must be treated as if delivered immediately *before* the closing of the office for that date. They will accordingly appear in any certificate which bears that day's date. On the other hand an application delivered after the office has closed for registration must be treated as delivered immediately *after* the opening of the office on the next day, and will not therefore be noted in a certificate which is dated the day of their delivery.

(*u*) Land Charges Act, 1925, s. 17 (7)—(9), and r. 15.

(*a*) S.R. & O., 1934, No. 285; 27 Halsbury's Statutes 465.

LOCAL LOANS

See LOCAL LOANS ACT.

LOCAL LOANS ACT

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See also titles : BORROWING ;
PUBLIC WORKS LOANS ACTS (as to Local Loans Stock) ;
STOCK.

Introduction.—In the history of the legislation governing borrowing by local authorities, the Local Loans Act, 1875 (*a*), marks an important step, although little use is now made of its provisions. This statute was the first Act to contain general provisions governing the issue of stock by local authorities. The later provisions in sect. 70 of the L.G.A., 1888 (*b*), and in sect. 52 of the P.H.A. Amendment Act, 1890 (*c*), as to the issue of stock by county councils, borough councils and urban district councils, superseded, however, the provisions in the Act of 1875 as to this method of borrowing ; and because of the greater convenience and simplicity of other forms of borrowing, few local authorities chose to work under the Local Loans Act. On at least two occasions the Act of 1875 has survived a threat of repeal. The Departmental Committee on Trustee Securities recommended its repeal, though recognising that it was used extensively by the corporation of the City of London (*d*), while the Local Government and Public Health Consolidation Committee in their First Interim Report (*e*) after pointing out that the loans raised under the Local Loans Act represented approximately 1.3 per cent. only of the whole amount of loans raised by local authorities felt that the question of its repeal scarcely fell within their terms of reference, and, as no inconvenience would arise by leaving it outstanding as a separate code, the L.G.A., 1933, which sprang from their report, does no more than remove one or two of the restrictive provisions (see *post*) which in the past prevented its wider use.

The Act of 1875 did not confer any new borrowing powers, but merely extended the range of borrowing methods. Three forms of security were authorised, viz : (1) *debentures*, (2) *debenture stock*, and (3) *annuity certificates*, and their mode of issue was prescribed by the Act. Two of these forms are continued by sect. 196 of the L.G.A., 1933 (*f*), which includes among the authorised modes of borrowing "*debentures or annuity certificates issued under the Local Loans Act,*

(a) 12 Halsbury's Statutes 242.
(c) 13 Halsbury's Statutes 845.
(e) Cmd. 4272, 1933, para. 107.

(b) 10 Halsbury's Statutes 744.
(d) Cmd. 3107, 1928, para. 21.
(f) 26 Halsbury's Statutes 413.

1875, as amended by any subsequent enactment (g).” “Debenture stock” is omitted because it may be issued only where the local authority have been empowered by another Act to issue debenture stock. [304]

Debentures.—A debenture is an instrument taking effect as a deed, and charging the local rate or property specified in the deed with payment of the principal sum and interest therein specified (h). Debentures may be made payable to bearer, in which case they are transferable by delivery, or they may be made payable to a named person, his executors, administrators, or assigns, in which event they are described as nominal debentures and are transferable by writing in manner directed by the local authority (i). Coupons for payment of interest, payable to bearer or to the person named therein or his order, may be attached to the debentures, or issued afterwards (e.g. half-yearly) (j). Debentures may be issued for any amount prescribed by the Act authorising the loan or, where no sum is prescribed, for sums of not less than £20 (j). [305]

Debenture Stock.—The creation and issue of debenture stock is permitted only where the local authority have power under another Act to borrow by the issue of debenture stock (l). It must be of a nominal amount not exceeding the amount of money authorised to be raised by such stock (in effect this prohibits the issue of stock at a discount) and, unless otherwise provided by the conditions of issue, is to be redeemable at par at the option of the local authority at such times and upon such conditions as are declared on issue (k). Debenture stock and interest thereon are a charge on the local rate or property specified at the time of issue, and the stockholder's title is to be evidenced by the entry in the stock register. But on application the local authority may grant to a holder a bearer certificate of title with interest coupons attached, and thereafter such stock shall cease to be dealt with through the medium of the register (k). Where bearer certificates are not issued, the stock is described as nominal debenture stock, and is transferable by writing in manner directed by the local authority. Bearer certificates may be surrendered for conversion into nominal debenture stock (l). The rate of interest and dates of payment are to be fixed at the time of issue of the stock, and debenture stock has all the incidents of personal estate (lc). [306]

Annuity Certificates (m).—This security is an instrument taking effect as a deed, and charging the local rate or property specified therein with payment of the annual sum specified. The annual sum (comprising part repayment of principal, and interest at the agreed rate upon

(g) *I.e.* as amended by the Local Loans Sinking Funds Act, 1885 (12 Halsbury's Statutes 281), and by the Trustee Act, 1893, now replaced by the Trustee Act, 1925; 20 Halsbury's Statutes 94.

(h) Act of 1875, s. 5; 12 Halsbury's Statutes 242.

(i) By s. 24; *ibid.*, 253, “local authority” is defined as meaning the justices of any county, etc., in quarter sessions, the council of any municipal borough, also any authority whatsoever having power to levy a rate, as in the Act defined, also any prescribed authority. Under the Corporation of London (Loans) Act, 1892 (c. lxxvii.), the mayor, commonalty and citizens of the City of London were declared to be a “local authority” within the meaning of the Local Loans Act, 1875, for the purposes of borrowing and re-borrowing money under a number of local Acts.

(j) Act of 1875, s. 5; 12 Halsbury's Statutes 242. A debenture issued by a county council may be for any amount not less than £5 (L.G.A., 1933, s. 106 (2); 26 Halsbury's Statutes 413).

(k) Act of 1875, s. 6.

(l) *Ibid.*, s. 20.

(m) *Ibid.*, s. 7.

the amount outstanding) may be made payable to bearer, in which case the annuity certificate is transferable by delivery, or to a named person, his executors, administrators, or assigns, in which case the certificate (termed a "nominal annuity certificate") is transferable by writing in manner directed by the local authority. An annuity certificate may not be issued for a less *annual* sum than that prescribed by the Act authorising the borrowing, or, where no sum is prescribed, than £8. [307]

Procedure on Issue.—Possession of statutory borrowing powers is of course a condition precedent to the issue of securities under the Local Loans Act, 1875, as under any other Act, but in addition the M. of H. may be asked to authorise the issue of the securities under an "official sanction" (n). The Minister may, after obtaining satisfactory particulars of the local authority's financial condition, grant such official sanction, and this affords conclusive evidence as to the local authority's power to issue the securities and as to the regularity of their issue. An official stamp on the securities authenticates their issue under official sanction. The owner of any such security may apply to the Minister for particulars as to the rateable value of the property subject to the rate or estimated value of the property charged by the security, and as to the relative priority of the loan and of the other loans of the borrowing authority. (But see *post*, p. 145, "Priority of Loans.")

Every debenture, stock certificate to bearer and annuity certificate issued by a local authority must be sealed with the common seal, where the authority are a body corporate, or signed by two or more members of the local authority, if not a body corporate, or otherwise executed as directed by the M. of H. (o). The Commissioners of Inland Revenue may, on application and payment, supply forms of debentures, stock certificates to bearer, coupons and annuity certificates (p).

The local authority must keep a register of nominal debentures, nominal debenture stock, and nominal annuity certificates, in which there must be recorded the names, addresses and descriptions of their owners for the time being, with a statement of the securities held by them, and the date of entry of any name in the register (sect. 23). Any person may inspect the register on payment of a fee not exceeding one shilling, and may obtain copies or extracts on payment of a small fee (sect. 24). The register may be rectified where so ordered by the High Court (or county court, where the value of the security concerned does not exceed £50) on application by an aggrieved person or by the local authority; and the court may decide the title of the party to have his name entered in or omitted from the register (sect. 25). [308]

Transfer and Transmission.—Under the Schedule to the Act (p), any number of persons may be registered as joint owners of the same nominal security, with right of survivorship among them. Unless otherwise directed by the local authority, the instrument of transfer of any nominal security must be executed by both transferor and transferee, and the transferor is to be deemed to remain owner of such security until the name of the transferee is entered in the register. The transfer books may be closed twice in each year for periods of not more than fourteen days. No special form of transfer is prescribed.

(n) Act of 1875, s. 26; 12 Halsbury's Statutes 251.

(o) *Ibid.*, s. 22; *ibid.*, 250.

(p) 12 Halsbury's Statutes 254.

The schedule also provides that the executors or administrators of a deceased owner of a nominal security shall be the only persons recognisable by the local authority as having any title to the security. Any person becoming entitled to a nominal security in consequence of the death or bankruptcy of any owner, or in consequence of the marriage of any female owner, may be registered as owner upon production of the requisite evidence, or may elect to have some person named by him registered as a transferee of the security. In the latter case, the person so becoming entitled must execute to his nominee an instrument of transfer, and present this to the local authority with proper evidence to prove his title, whereupon the local authority must register the transferee as owner. [309]

Repayment of Loans.—By sect. 13 of the Act (*g*), every loan borrowed under it must be discharged within the period prescribed by the Act authorising the borrowing, or, if no period is prescribed, within twenty years from the date of borrowing. The prescribed methods of discharging loans are: (1) by the issue of annuity certificates limited to expire within the prescribed period; or (2) by the issue of debentures made payable in such a manner that an equal amount is paid off in each year, so securing that the whole amount is repaid at or before the end of the prescribed period; (3) by the provision of equal annual instalments to be applied first in the payment of interest due, the residue to be applied to the repayment of debentures or the redemption of debenture stock (sects. 13, 14), one method indicated being by drawing lots, but this method cannot be regarded as satisfactory; (4) by the establishment of a sinking fund. At first this was permitted only where a sinking fund was prescribed by the special Act authorising the loan, but sect. 4 of the Local Loans Sinking Funds Act, 1885 (*r*), provided that every loan borrowed under the Act of 1875 might be discharged by the establishment of a sinking fund.

By sect. 15 any sinking fund established is to be formed by making equal yearly or half-yearly contributions, to accumulate at compound interest. Sinking fund moneys must be invested in trustee securities, or in debentures, debenture stock, or annuity certificates issued under the Act; and the sinking fund may be applied from time to time, in whole or in part, in discharge of the loan for which it was created. There are other provisions in the Act of 1875 relating to sinking funds which are defective, and have been found difficult to operate (*s*). Sect. 16 required an annual return as to the moneys and investments of the sinking fund to be made to the M. of H., but this section was repealed and replaced by sect. 199 of L.G.A., 1938 (*t*).

In default of payment of any sum due in respect of any security, such sum is to be deemed to be a specialty debt, and the person entitled

(*g*) 12 Halsbury's Statutes 246.

(*r*) *Ibid.*, 281.

(*s*) See *e.g.*, para. 60 of the Report of the Select Committee on the Application of Sinking Funds in Exercise of Borrowing Powers (Cmd. 103, 1909): "There are special objections to the use of sinking funds established for the repayment of debt where the loans have been raised by debentures or debenture stock under the Local Loans Act. In view of the provisions of that Act with regard to the priority and discharge of loans and other matters, serious difficulties might arise if the sinking funds were used for other borrowing powers. Your committee, therefore, recommend that sinking funds set aside in respect of such debentures or debenture stock should not be applied for new capital purposes."

(*t*) 20 Halsbury's Statutes 415.

may bring an action against the local authority claiming a *mandamus* to enforce payment (sect. 11). Where default is made for a period of twenty-one days in paying an amount of not less than £500, the persons entitled may apply to the county court for the appointment of a receiver (sect. 12). A receiver, when appointed, has power to levy a rate if the security is charged on the local rate, or to recover the rents and profits of any property on which the security is charged. If the charge includes a power of sale, the receiver may sell the property subject to the directions of the court (sect. 12). [310]

Priority of Loans.—Sect. 8 of the Act (*u*) provided that all sums borrowed in respect of the same loan should rank equally for repayment, notwithstanding any difference in the dates of the securities. But where more than one loan was raised by a local authority under the Act, the sums borrowed in respect of each loan were to take priority according to the date of each loan. This provision was one of the chief defects of the Act, and the principal reason for its unpopularity. Both provisions as to priority have now been repealed as respects county, borough and district councils by sect. 197 (4) of L.G.A., 1933 (*a*), which section, while providing that all securities created by the local authority shall rank equally without any priority, preserves any priority existing at, or any right to priority conferred by a security created before, the commencement of that Act (June 1, 1934). [311]

Supplemental Matters.—No notice of any trust, expressed, implied or constructive, shall be received by the local authority or by any officer, in relation to any security (*b*). A person lending money to a local authority under the Act is not bound to inquire into the application of the money or be in any way responsible for its non-application or misapplication (*c*).

The Public Works Loan Commissioners may take debentures, debenture stock, or annuity certificates as security for any loan which they are authorised to grant to a local authority under any Act, if they are satisfied with the sufficiency of the rates or other property available as security (sect. 28). See title PUBLIC WORKS LOANS ACTS.

With the consent of the M. of H., the local authority may make, and from time to time vary, rules with respect to the issue of coupons, registry of securities, mode of transfer, fees (if any), and other matters (sect. 80).

If any security is lost, mislaid or destroyed, the local authority must issue a fresh security, on such indemnity being given as they may require, and on payment of expenses (sect. 33). [312]

Stamp Duties.—Securities issued under the Local Loans Act, 1875, attract capital stamp duty at the rate of 2s. 6d. per cent. under sect. 8 of the Finance Act, 1899 (*d*), as amended by sect. 13 of the Finance Act, 1907 (*e*). Nominal debentures and nominal annuity certificates will be stamped at this rate at the time of issue, while on the issue of nominal debenture stock a return of loan capital must be submitted to the

(u) 12 Halsbury's Statutes 244.

(a) 26 Halsbury's Statutes 414.

(b) Act of 1875, s. 9; 12 Halsbury's Statutes 245.

(c) *Ibid.*, s. 10.

(d) 16 Halsbury's Statutes 711.

(e) *Ibid.*, 737. Under this section a rebate may be claimed of 2s. per cent. on the amount of stock issued for the purpose of converting or consolidating existing debt.

Commissioners of Inland Revenue and the stamp duty paid, in accordance with sect. 8 of the Finance Act, 1890. Where a stock certificate to bearer is issued, however, it must be stamped on issue at the rate of £8 per cent. (*f*). Stamp duty on transfers of nominal securities, if payable by the local authority, may be compounded for under sect. 115 of the Stamp Act, 1891 (*g*). [313]

Trustee Status.—Nominal debentures and nominal debenture stock, provided they are not redeemable within fifteen years, are available for investment by trustees, under the authority of Order XXII., r. 17 (1) of the Rules of the Supreme Court. Also under sect. 5 (4) of the Trustee Act, 1925 (*h*), a trustee having power to invest money in the debentures or debenture stock of any railway or other company may invest in any nominal debentures or nominal debenture stock issued under the Local Loans Act, 1875. [314]

London.—Sect. 69 (8) of L.G.A., 1888 (*i*), which extended to county councils in certain cases the powers of the Local Loans Act, 1875, does not apply to the L.C.C. (*k*), but as indicated *ante*, p. 141, the Act of 1875 has been extensively used by the City of London. See also note (*i*), *ante*, on p. 142. The borrowing and lending by London local authorities is dealt with under the title BORROWING. [315]

(*f*) Stamp Act, 1891, ss. 108, 109, and Sched. I. under "Share Warrant," etc.; 16 Halsbury's Statutes 650, 681, as amended by s. 38 of Finance Act, 1920; 16 Halsbury's Statutes 854.

(*g*) 16 Halsbury's Statutes 653.

(*h*) 20 Halsbury's Statutes 100.

(*i*) 10 Halsbury's Statutes 743.

(*k*) See s. 3 of L.C.C. (Finance Consolidation) Act, 1912; 2 & 3 Geo. 5, c. cv.

LOCAL MARINE BOARDS

See HARBOURS.

LOCAL PUBLICATIONS

PUBLICATIONS	REQUIRED	PAGE	OTHER PUBLICATIONS BY LOCAL	PAGE
STATUTE	- - -	BY 146	AUTHORITIES	- - - 148
			LONDON	- - - 149

See also titles: ADVERTISING BY LOCAL AUTHORITIES.
PUBLICITY OFFICER.

Publications of local authorities may be divided into two categories—those which are required by statute or regulation, and those which are not so required but are published on the initiative of the local authority.

Publications Required by Statute. (1) *Abstract of Accounts.*—By para. 7 of the Audit Regulations, 1934 (*a*), made by the Minister of

(a) S.R. & O., 1934, No. 1188.

Health under Part X. of the L.G.A., 1933 (*b*), it is provided that any local authority, board or joint committee whose accounts or part of whose accounts are subject to review by a district auditor shall, after the completion of the audit, make an abstract of the accounts as audited, and shall within one month of the receipt by them of the auditor's report give notice by advertisement in one or more local newspapers that the abstract has been deposited at the appropriate office of the authority and will be open for inspection at all reasonable hours by any local government elector for the area of the authority. It will be observed that there is no express instruction in the regulations that the abstract of accounts shall be published, but copies may be required and it is the usual practice of most authorities to have the abstract of accounts printed and published.

Sec. 240 (*c*) of the L.G.A., 1933, provides in relation to accounts of a borough which are not subject to audit by a district auditor, that the treasurer shall, after audit of the accounts for each financial year, print an abstract of the accounts for that year; and local government electors are entitled to be supplied with copies of the abstract of accounts on payment of a reasonable sum. By para. 8 of the Audit Regulations, 1934, every joint committee or joint board, other than a joint committee appointed by parish councils or parish meetings, must, within six weeks after receiving the report of the district auditor, send to the several authorities constituting the joint committee or joint board a copy of the report and of the financial statement of the accounts of the joint committee or joint board as certified by the district auditor. [315A]

(2) *Report of Medical Officer of Health*.—Paras. 6 (3) and 17 (5) of the Sanitary Officers (Outside London) Regulations, 1935 (*c*), require an M.O.H. for a county or district, as soon as practicable after December 31 in each year, to make an annual report to the council on the sanitary circumstances, sanitary administration and vital statistics of the county or district. His report must contain such information as may be required by the Minister and as many copies of the report as may be required must be furnished to the Minister. A district M.O.H. must also make a yearly report showing specified particulars as to overcrowding and the progress of the campaign against overcrowding in the district (para. 17 (4)). [316]

(3) *Annual Reports of Local Authorities*.—Sect. 206 of the P.H.A., 1875 (*d*), requires every borough and district council to make an annual report of works executed and of their receipts and disbursements under the Act. This report is to be made in such form and at such time as the Minister may direct, and as no general direction seems to have been given, an annual report of this kind is not, in most localities, prepared. Many of the larger authorities, however, produce each year illustrated handbooks describing in a popular and non-technical way the various rate-borne services within their areas (*e*). Some local authorities have obtained special powers in local Acts to publish such reports or "year-books," but in other cases no such special powers exist, and the cost of the publication of the reports is defrayed by means of revenue received from advertisements. [316A]

(b) 26 Halsbury's Statutes 424.

(c) S.R. & O., 1935, No. 1110.

(d) 13 Halsbury's Statutes 713.

(e) See e.g. the Birmingham and Manchester Corporation Handbooks.

Other Publications by Local Authorities.—The principal types of publications of local authorities, other than those prescribed by statute or by regulations, are annual reports, guide books and pamphlets relating to some particular service or activity of the local authority, *e.g.* Public Health, Maternity and Child Welfare or Town Planning; and special booklets published either to commemorate some particular event such as the Centenary Year of Local Government in 1935, or souvenir programmes published when some large scheme carried out by the local authority, *e.g.* the building of a new bridge, the erection of a new town hall or large housing estate, is being officially opened. [317]

Publicity.—Nearly every borough in the country, and nearly every holiday resort whether it be a borough or a district, publishes an official guide book.

There are two systems under which such guides are published. In some cases, local authorities accept the offer of a firm which specialises in such matters to be completely responsible for the publication of the guide book, when no expense in respect of such publication falls on the authority and the firm recoups itself by fees for advertisements received from local tradespeople. Other local authorities entrust the publication of their guide to their own publicity officer or to the manager of their development bureau, where such a department exists. Again, when this course is followed, fees are received for advertisements which often cover the entire cost of publication.

Publications for which some local authorities are indirectly responsible include pamphlets relating to the amenities of a district, or to its suitability for development as an industrial area, which are published by local publicity and development departments. Several local authorities, in conjunction with the local Chamber of Commerce, contribute towards the expenses of such departments. Sect. 1 of the Local Authorities (Publicity) Act, 1931 (*f*), permits any borough or urban district council to subscribe an amount not exceeding the equivalent of a rate of a half-penny in the pound towards any organisation approved by the Minister of Health established for collecting and collating information regarding the amenities and advantages of the British Isles. [317A]

Advertisement of Watering Places.—Sect. 1 of the Health Resorts and Watering Places Act, 1936 (*g*), permits the council of a borough or urban district to advertise within the British Isles the advantages and amenities of their district as a health resort or watering place in any manner they think fit (except by advertisement in a local newspaper) and for that purpose may (1) combine with any other local authority, organisation, company or person, and (2) spend not more than the equivalent of a $1\frac{1}{2}$ pence rate. [318]

Public Health.—By sect. 67 of the P.H.A., 1925 (*h*), any local authority or county council may arrange for the publication within their area of information on questions relating to health or disease and may defray the whole or a portion of the expenses incurred for any of the purposes of that section. Many local authorities avail themselves of the optional powers conferred by this section by publishing small brochures and leaflets about the laws of health and the prevention of

(*f*) 24 Halsbury's Statutes 369.

(*h*) 13 Halsbury's Statutes 1146.

(*g*) 29 Halsbury's Statutes.

disease. Special pamphlets are often issued during a "health week" organised by the local authority. [318A]

Town Planning.—On p. 172 of the Fifteenth Annual Report of the M. of H. (i), reference is made to the value of the issue by local authorities, including Joint Executive Committees, of explanatory leaflets relating to town-planning procedure. "There has been," says the report, "an increase in the issue of such leaflets, and they are said to be of great assistance in securing appropriate forms of development and the preservation of amenities. It is usual in the leaflets to explain the purpose of planning, to summarise the principal characteristics of the area to be planned, and to indicate how, by the co-operation of all concerned, sound and progressive forms of development can be facilitated, on lines economical both for public and private interests, and how the preservation of buildings or other objects of architectural, historic or artistic interest and places of natural interest or beauty can be encouraged."

Several town planning authorities and joint planning committees have published such leaflets. [319]

London.—The Audit Regulations, 1934, mentioned *ante* on p. 146, extend to London, but the report of the M.O.H. of a metropolitan borough is governed by para. 14 (3) of the Sanitary Officers Order, 1926 (k), as amended by the Sanitary Officers (London) Regulations, 1935 (l). Particulars similar to those necessary outside London are required. The L.C.C. publish weekly, under the editorship of the Clerk of the Council, an official publication called "the L.C.C. Gazette," containing various legal and other notices, particulars of contracts, tenders, appointments and instructions to officers. The council also frequently place on sale their special minutes, reports, statistics and other documents prepared for official use, which are likely to interest the public.

Under sect. 61 of the L.C.C. (General Powers) Act, 1929 (m), metropolitan borough councils must publish an annual report of their proceedings, etc., of which copies must be sent to the M. of H. and the L.C.C., and must also be supplied to any person on payment of a sum not exceeding 1s.

By sect. 190 of the Metropolis Management Act, 1855 (n), metropolitan borough councils must make out annually a list of estates, charities and bequests, etc. (if any) belonging to and under the control of the borough council, and also a list of the beneficiaries. This list is to be open for the inspection of the ratepayers when the accounts are audited.

By sect. 42 of the L.C.C. (General Powers) Act, 1926 (o), the L.C.C., City corporation and metropolitan borough councils may arrange for the publication of information on questions as to health or disease, and the L.C.C. may contribute towards the expenses so incurred by borough councils. [319A]

(i) Cmd. 4664.

(k) S.R. & O., 1926, No. 552. Printed at p. 3612 of Lumley's Public Health 10th ed.

(l) S.R. & O., 1935, No. 1111.

(m) 11 Halsbury's Statutes 1425.

(n) *Ibid.*, 938.

(o) *Ibid.*, 1384.

LOCAL TAXATION LICENCES

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MOTOR LICENCES.

Introductory.—The duties now collected by county and county borough councils as local taxation licences were imposed originally as excise duties and were collected by the Commissioners of Inland Revenue as part of the national revenue. Sect. 20 (1), (2) of the L.G.A., 1888 (a), created a Local Taxation Account into which the Commissioners were required to pay the proceeds of the duties on the licences named in the First Schedule to the Act and called Local Taxation Licences. The sums so paid into the Local Taxation Account were then distributed among the councils of counties and county boroughs (b) in England and Wales, under the direction of the L.G.B. The licences specified in the First Schedule were :

(1) Certain licences for the sale of intoxicating liquor by retail, (2) game licences, including licences to deal in game, (3) beer, etc., dealers' licences, (4) dog, gun, carriage, locomotive, armorial bearings and male servants' licences, and (5) miscellaneous licences such as licences for tobacco dealers, auctioneers, hawkers, house agents and pawnbrokers. By sub-sects. (3), (4) and (5) of sect. 20, provision was made for the transfer to county councils of the power to levy the duties on all or any of the local taxation licences, and for vesting in county councils and their officers the relevant powers, duties and liabilities of the Commissioners of Inland Revenue and of their officers. It was intended that the transfer should be effected by Order in Council made on the recommendation of the Treasury. The object of the scheme was to supplement the revenues of county councils, but the working of the scheme was spoilt, through the selection by the Government later of some of these licences, e.g. the beer dealers' licences, as suitable for an increase of duty for the benefit of the National Exchequer, and carriage licences as the basis of the Road Fund.

On a transfer by Order in Council penalties and forfeitures recovered by a county council were to be paid to the county fund and carried to the same account as the duties (sect. 20). The county council were given the same power as the Treasury for the restoration of for-

(a) 10 Halsbury's Statutes 700, repealed by the L.G.A., 1920.

(b) In this title the expression "county council" includes a county borough council, unless the contrary is stated.

feitures and the mitigation or remission of penalties, but no special privileges of the Crown as regards legal proceedings were conferred on the county councils (*ibid.*). On the transfer, the county council must provide for the issue of licences in different parts of the county so as to enable persons to obtain licences near their residences, and a licence which prior to transfer was operative in any place in the United Kingdom outside the county in which it was issued is to continue to be so operative (sect. 20 (5)). [320]

Sect. 17 of the Finance Act, 1907 (c), altered the system of payment into the local taxation account, and stabilised the payments in the event of alterations in the rate of duty.

By the Finance Act, 1908 (d), it was provided that the power to levy the duties on the following local taxation licences, namely, game-dealers, dogs, game, gun, carriage (including locomotives), armorial bearings and male servants, should be transferred to county councils. Power was given to make an Order in Council fixing the date of transfer, and making further provisions for giving full effect to the transfer and requiring the supply to the M. of H. (formerly the Local Government Board) of returns of the amounts collected. The transfer did not affect any then existing equitable adjustment of the proceeds of local taxation licences under the L.G.A., 1888, or otherwise, except in so far as provision might be made by Order in Council for giving effect to any such adjustment. By sect. 6 (2) of the Act of 1908, sect. 20 (3), (4), (5) of the L.G.A., 1888, were applied as if the transfer had been effected by Order in Council. The sum of £40,000 annually was made payable out of the Consolidated Fund into the Local Taxation Account for distribution amongst the county councils in proportion to the proceeds of the duties on the transferred licences collected in each county during the preceding year.

If the rate of duty on any local taxation licence is altered, the application of sect. 6 to that duty ceases unless Parliament otherwise provides (e).

January 1, 1909, was fixed as the date of the transfer by an Order in Council of October 19, 1908 (f). This Order also provides for (1) the vesting in county councils within their respective counties of all powers and duties vested in the Commissioners of Inland Revenue in relation to the transferred licences, but free from Treasury control; (2) the forms of licence, certificates, etc., to continue to be printed and provided by the Commissioners; (3) the issue of licences by officers of the Post Office authorised by the Postmaster-General (g); the payment by the P.M.G. to county councils of duties received at post offices, and the certification of amounts to the M. of H.; (4) the making by county councils of allowances and repayments; (5) the making of

(c) Repealed by the L.G.A., 1929.

(d) S. 6; 16 Halsbury's Statutes 739.

(e) Proviso to s. 6 (4), indicating that the Government could increase the duties and resume their collection. The immediate object of the transfer of 1908 was to relieve the officers of Customs and Excise of sufficient work to enable them to undertake their then new duties as pension officers under the Old Age Pensions Act, 1908; 20 Halsbury's Statutes 580.

(f) S.R. & O., 1908, No. 844.

(g) The Postmaster-General is to have regard to s. 20 (5) of the L.G.A., 1888. 10 Halsbury's Statutes 700, as to enabling persons to obtain licences near their residences. In practice the Postmaster-General appoints also as authorised officers of the Post Office one or more officers of the county council to issue licences at the offices of the county council; see Local Taxation (Licence Officers) Order, 1922 S.R. & O., 1922, No. 213.

returns by county councils to the M. of H., and the making of equitable adjustments between councils; (6) the delegation by county councils to selected officers of any of their powers and duties, but any officer so selected to be subject to the same liabilities as an officer of Inland Revenue, and any person failing to comply with any demand of, or obstructing, any such officer to be subject to the same liability as if the officer were an officer of Inland Revenue; (7) the keeping by the clerk of the registers of persons licensed to keep dogs or to carry guns, and the list of licensed game-dealers; (8) the disposal of penalties imposed under the statutes relating to dog licences, and the procedure on applications for certificates of exemption in respect of dogs; and (9) the posting of notices required by the Dog Licences Act, 1867 (*h*), and the Revenue Act, 1869 (*i*), in the places ordinarily used for posting public or parochial notices, as well as on or near church doors. [321]

Para. XV. of the Order in Council provides that the power to recover the duties upon licences for armorial bearings, carriages, and male servants by issue of a levy warrant and a warrant of commitment (*k*) shall not be exercised by a county council or by their officers; and a person who fails to pay such duties, after delivery of a declaration relating thereto, is subject to the same liabilities as if he had not delivered a declaration.

Sect. 85 of and the Second Schedule to the L.G.A., 1929, discontinued as from March 31, 1930, the grants payable out of the Consolidated Fund into the Local Taxation Account, and provided for the winding-up of the Local Taxation Account and the Exchequer Contribution Accounts of county councils (*l*). By s. 85 (5) any financial adjustment between spending authorities with respect to the discontinued grants payable to those authorities ceased to have effect (*m*) as from April 1, 1930, but provision was made allowing new financial adjustments to be made if and so far as might be necessary having regard to the new Exchequer grants payable to local authorities under Part VI. of the Act (*n*). [322]

Licences Administered by County Councils.—The only local taxation licences with which county councils are now concerned are those transferred by sect. 6 of the Finance Act, 1908 (*o*), and are:

Armorial Bearings.—The duty on armorial bearings was imposed by the Revenue Act, 1869 (*p*), and is at the rate of £2 2s. 0d. per annum if the armorial bearings are painted, marked or affixed on to any carriage (*q*), and at the rate of £1 1s. 0d. per annum if otherwise used. The duty is payable by the person wearing or using the armorial bearings. The term "armorial bearings" means any armorial bearing,

(*h*) S. 7; 1 Halsbury's Statutes 345.

(*i*) S. 20; 16 Halsbury's Statutes 249.

(*h*) For this special mode of recovery of duties, see Revenue Act, 1869, s. 30; 16 Halsbury's Statutes 253.

(*l*) See the L.G.A., 1929, s. 85 (4), and Sched. III; 10 Statutes 937, 979, for provisions as to certain payments formerly made out of these accounts.

(*m*) So held in case cited in next note.

(*n*) 10 Halsbury's Statutes 937. As to the necessity for a new financial adjustment, see *Liverpool Corp'n. and Others v. Lancashire C. C.* [1936] 2 All E.R. 62.

(*o*) As to licences for mechanically propelled vehicles, see title MOTOR LICENCES. These licences are not local taxation licences within the meaning of the L.G.As., 1888 and 1929, and carriage licences are now regulated by the Road Vehicles (Registration and Licensing) Regulations, 1924; S.R. & O., 1924, No. 1462, made under the Roads Act, 1920.

(*p*) S. 18; 16 Halsbury's Statutes 246.

(*q*) Includes a motor vehicle.

crest or ensign, whether or not registered in the College of Arms (sect. 19 (18)). To come within the definition it would appear that a device which is not a complete coat of arms or crest must be of such a nature as to suggest a connection with an heraldic coat of arms or crest (*r*). Sect. 19 (1) of the Act exempts from duty members of the Royal Family and persons who by right of office wear or use arms of insignia of any member of the Royal Family, or of any corporation (*s*) or royal burgh. By sect. 19 (15) persons duly licensed to keep or use public stage or hackney carriages are exempt from duty in respect of armorial bearings borne thereon. Although in practice duty is frequently not claimed in respect of armorial bearings used on stationery used solely for business purposes, it has been held that duty was chargeable where a member of the Royal College of Veterinary Surgeons used, for business purposes, notepaper bearing the arms of the college (*t*). In practice duty is not demanded of officers or members of clubs and similar organisations using the armorial bearings of the organisation on official business, provided that the organisation has taken out a licence. [323]

Male Servants.—Under sect. 18 of the Revenue Act, 1869 (*u*), an annual duty of 15s. is also payable in respect of each male servant employed. By sect. 10 of the Finance Act, 1921 (*a*), a person is not to be deemed to be a male servant for the purpose of the duty unless, in addition to being employed in one of the capacities mentioned *infra*, he is also employed in a personal, domestic or menial capacity. In sect. 19 (3) of the Act of 1869, "male servant" is defined as meaning and including persons wholly or partially employed in the following capacities: *maitre d'hôtel*, house steward, master of the horse, groom of the chambers, valet de chambre, butler, under-butler, clerk of the kitchen, confectioner, cook, house-porter, footman, page, waiter, coachman, groom, postilion, stable-boy or helper in the stables, gardener, under-gardener, park keeper, gamekeeper, under-gamekeeper, huntsman and whipper-in. Sect. 13 of the Motor Car Act, 1903 (*b*), added to the foregoing definition a person employed to drive a motor-car. By sect. 4 of the Customs and Inland Revenue Act, 1873 (*c*), hotel keepers, retailers of intoxicating liquor, and refreshment house keepers are exempted from liability to duty in respect of male servants wholly employed for the purpose of the business. The Customs and Inland Revenue Act, 1876 (*d*), excepts from the definition of "male servant" a servant *bona fide* employed in some capacity outside the foregoing definitions and occasionally or partially employed in a capacity within the definition, and also excepts a servant who is *bona fide* engaged to serve his employer for a portion only of each day and who does not reside in his employer's house.

(*r*) See *Milligan v. Cowan* (1896), 60 J. P. 373; 30 Digest 238, *a* (device on ring).
 (*s*) "Corporation" does not include an ancient guild of the City of London and duty was therefore chargeable on armorial bearings used on notepaper of the Worshipful Co. of Plumbers, and (*per* RIDLEY, J.) the exemption applies to persons using armorial bearings by right of office, and therefore a municipal corporation may be liable to duty in respect of arms although the mayor would be exempt if using the arms during his year of office; *Plumbers, Worshipful Co. of v. L.C.C.* (1913), 77 J. P. 302; 13 Digest 437, 1806.

(*t*) *L.C.C. v. Kirk*, [1912] 1 K. B. 345; 30 Digest 238, 123.

(*u*) 16 Halsbury's Statutes 246.

(*a*) *Ibid.*, 873.

(*b*) 19 Statutes 82. Now replaced by s. 118 of the Road Traffic Act, 1930; 23 Halsbury's Statutes 686.

(*c*) 16 Halsbury's Statutes 277.

(*d*) S. 5; 16 Halsbury's Statutes 285.

Sect. 19 (1) of the Revenue Act, 1869 (*e*), exempts from liability to duty on male servants, members of the Royal Family and a sheriff, mayor or other officer of a corporation serving in an annual office therein, and employing male servants for the purpose of his office during his year of service. By sect. 19 (5) conditional exemptions are provided for officers of the army and navy, publicans, refreshment house or livery stable keepers, and proprietors of public stage or hackney carriages. [324]

The definition of "male servant" has been held not to include a labourer doing unskilled work in a garden (*f*), or an apprentice in training stables (*g*), or servants employed in retail stores to prepare meals for and attend staff dining rooms (*h*); but persons, not in Government employ, engaged as cooks in a luncheon club organised by civil servants in a Government office have been held to be taxable (*i*). Similarly porters employed by the owner of a block of flats, part of whose duties involved cleaning of the common halls and staircases, and also attendance on the tenants, have been held to be taxable (*k*), as also was a gardener employed by the owner of an estate to work in gardens which were available for the use of the residents in houses on the estate (*l*). On the other hand, a jobbing gardener who was at liberty to work for other employers, and could send a substitute, and supplied his employer with plants from his own greenhouses was held not taxable (*m*). Coachmen employed by a contractor for the purpose of taking defective children to school under a contract with a local education authority have been held not taxable (*n*). In the case of a man employed by a farmer and horse-breeder, who lived in his employer's house and performed some menial and domestic duties, it was held that the main employment was in the employer's business, and that the duty was not chargeable (*o*). But in a later case (*p*), it was held that the test to be applied is the nature of the servant's duties, and that the question whether he is employed for purposes of trade is not material.

The foregoing decisions must now be considered in the light of sect. 10 of the Finance Act, 1921 (see *ante*, p. 153), which materially narrows the scope of the earlier definitions of "male servant" as interpreted by the Scottish Courts (*q*). The section is very obscure and is open to the construction that to attract the duty a servant must be employed in more than one capacity, though this can hardly have been intended, and no attempt is made to indicate the precise meaning of "personal, domestic or menial capacity." Apparently the section was intended to affirm the legal position as stated by ATKIN, J., in *Perry's Case* (*p*), when, after discussing the position of male servants

(*e*) 10 Halsbury's Statutes 247.

(*f*) *Dillon v. Bath* (1899), 63 J. P. 597; 39 Digest 249, 320.

(*g*) *Horan v. Hayhoe*, [1904] 1 K. B. 288; 39 Digest 249, 322.

(*h*) *Whiteley v. Burns*, [1908] 1 K. B. 705; 39 Digest 249, 330.

(*i*) *L.C.C. v. Houldie* (1911), 75 J. P. 442; 39 Digest 249, 323.

(*j*) *Marchant v. L.C.C.*, [1910] 2 K. B. 379; 39 Digest 249, 309.

(*k*) *Bedford (Duke) v. L.C.C.* (1911), 75 J. P. 317; 39 Digest 249, 321. In a cross appeal heard at the same time four men employed under the gardener were held not to be taxable, and the Divisional Court declined to disturb the findings of fact.

(*l*) *Braddell v. Baker* (1911), 75 J. P. 185; 39 Digest 250, 340.

(*m*) *L.C.C. v. Allen*, [1913] 1 K. B. 9; 39 Digest 248, 318.

(*n*) *Wolfenden v. Mason* (1913), 78 J. P. 13; 39 Digest 251, 357.

(*o*) *L.C.C. v. Perry*, [1915] 2 K. B. 193; 39 Digest 247, 305.

(*q*) See *Heriot's Trusts v. Matson* (1920), 57 S. L. R. 203; 39 Digest 247, *m*.

forming part of a domestic establishment, he said: "This does not exclude employment of male servants for trade purposes. A tradesman or manufacturer may employ such persons for the purposes of his business to render such domestic services to himself or his business staff or his customers." [325]

Carriages.—The present excise duties on carriages not mechanically propelled are imposed by sect. 4 of the Customs and Inland Revenue Act, 1888 (*r*). The duties are:

	£	s.	d.
(1) On four-wheeled carriages drawn by two or more horses, etc.	—	—	2 2 0
(2) On such carriages drawn by one horse	—	—	1 1 0
(3) On a carriage with less than four wheels	—	—	15 0
(4) On every hackney carriage	—	—	15 0

Mechanically propelled carriages and light locomotives (*s*) are excepted from the above duties by sect. 13 of the Finance Act, 1920 (*h*). As to the duty on mechanically propelled vehicles, including trams, see title MOTOR LICENCES. [326]

The licences are annual, but under sect. 4 (2) of the Act of 1888 a licence may be taken out at half-rate where a person commences to keep a carriage after October 1, and makes the necessary declaration. In sect. 4 (3), a carriage is defined as any carriage, except a hackney carriage, drawn by a horse or mule, or by horses or mules upon a road (*u*), but does not include a waggon, etc., constructed or adapted for use and solely used for the conveyance of any goods or burden in the course of trade or husbandry, and on which the name and address of the person keeping it are painted. A hackney carriage means any carriage standing or plying for hire, and includes a carriage let for hire by a coachmaker or person whose business it is to sell or let carriages for hire, provided the letting is not for three months or more.

A licence is not required solely on account of the use of a carriage for the gratuitous conveyance of voters at an election (*a*). There is also an exemption in respect of vehicles requisitioned by a Receiver of Wreck (*b*). [327]

Penalties.—The penalty for employing a male servant, keeping a carriage, or wearing or using armorial bearings without a licence, is a sum not exceeding £20; but no penalty is enforceable if within twenty-one days of employment, keeping, or use, commencing, the defendant has delivered the prescribed declaration and paid the appropriate duty (*c*). The burden of proof as to the number of male servants employed, or the number of carriages kept, or as to any statutory exemption rests on the defendant (*c*). [328]

Dogs.—The Dog Licences Act, 1867 (*d*), imposed an annual duty of

(*r*) 16 Halsbury's Statutes 577.

(*s*) The Locomotives on Highways Act, 1806, s. 3, imposed additional duties on carriages and hackney carriages classed as light locomotives; but these duties are superseded by the duties levied under s. 13 of the Finance Act, 1920.

(*u*) 16 Halsbury's Statutes 852.

(*a*) The part of the definition in s. 4 (3) dealing with carriages propelled by mechanical power is obsolete.

(*b*) Corrupt and Illegal Practices Prevention Act, 1883, s. 14 (4), and Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 10 (4); 7 Halsbury's Statutes 471, 515.

(*c*) Merchant Shipping Act, 1894, s. 512; 18 Halsbury's Statutes 353.

(*d*) Revenue Act, 1806, s. 27; 16 Halsbury's Statutes 251. See also s. 22.

(*e*) S. 3; 1 Halsbury's Statutes 344.

5s. on taking out a licence to keep a dog; the rate of duty was increased to 7s. 6d. by the Customs and Inland Revenue Act, 1878 (e). The penalty for keeping a dog without a licence, or for keeping a greater number of dogs than is authorised by the licence, is £5 (Act of 1867, sect. 8). Any person in whose custody, charge or possession, or in whose house or premises, any dog is found or seen, is deemed to be the keeper of the dog unless the contrary is proved, and the owner or master of hounds is deemed to be their keeper (*ibid.*). A similar penalty is imposed for failing to produce a licence to an excise (f) or police officer within a reasonable time after being requested to do so (*ibid.*, sect. 9). Dogs under the age of six months (g) are exempt from duty (*ibid.*, sect. 10), and a hound under the age of twelve months which has never been entered in or used with any pack of hounds is exempt if the master has duly licensed all the hounds entered in the pack (h).

Further exemptions from duty are set out on p. 71 of Vol. V., where the procedure for the exemption by a certificate of cattle or sheep dogs is also referred to. Application for the certificate of exemption may be made at any time, but by sect. 22 (2) of the Act of 1878 all exemptions expire on December 31 following their grant (i).

Sect. 23 of the Customs and Inland Revenue Act, 1878 (k), provides that as an alternative to the recovery of penalties under the Excise Acts, penalties imposed by the Dog Licences Act, 1867, or by Part III. of the Act of 1878 may be recovered upon the information of a police constable before a court of summary jurisdiction, and in such a case the court may award costs and mitigate the penalty to such amount as they think fit. The penalty recovered on a police prosecution is divided equally between the county council and the police super-annuation fund.

A person convicted of an offence of cruelty to a dog under the Protection of Animals Act, 1911 (l), may be disqualified, for such time as the court thinks fit, for keeping a dog or for holding or obtaining a dog licence, and any current licence is suspended (m). Penalties are imposed for keeping a dog or applying for or obtaining a dog licence during disqualification (m). [329]

Game.—Duties on licences to take or kill or deal in game are imposed by the Game Licences Act, 1860 (n). The dates between which licences are valid are varied by the Customs and Inland Revenue Act, 1883 (o), and provision is made for the issue of an occasional game licence for fourteen days only. The types of licence and rates of duty are :

(e) S. 17; 1 Halsbury's Statutes 348.

(f) This includes an officer authorised by a local taxation authority.

(g) Proof of age rests on the defendant; Customs and Inland Revenue Act, 1878, s. 19; 1 Halsbury's Statutes 349.

(h) Customs and Inland Revenue Act, 1878, s. 20.

(i) As to practice on applications for exemption, see observations of Lord LINDLEY at Swainsthorpe Petty Sessions reported in 71 J. P. Jo. 343.

(k) 1 Halsbury's Statutes 350.

(l) *Ibid.*, 373.

(m) Protection of Animals (Cruelty to Dogs) Act, 1933, s. 1; 26 Halsbury's Statutes 51.

(n) S. 2; 8 Halsbury's Statutes 1085. As respects dealers in game, this is in addition to the licence of the borough or district council under the Game Act, 1831; 8 Halsbury's Statutes 1066, and s. 27 of L.G.A., 1894; 10 Halsbury's Statutes 797. These licences are dealt with on pp. 150, 151 of Vol. VI.

(o) Ss. 4, 5; 16 Halsbury's Statutes 538.

	£	s.	d.
Licence to kill game, commencing August 1, and expiring July 31 following	—	—	—
The like, but expiring October 31	—	—	—
Licence to kill game commencing November 1 and expiring July 31	—	—	—
Occasional licence to kill game, valid for a continuous period of 14 days	—	—	—
Gamekeeper's licence to kill game (p) (whole year)	—	—	—
Licence to deal in game (q) commencing July 2 and expiring July 1 following	—	—	—
	3	0	0
	2	0	0
	2	0	0
	1	0	0
	2	0	0
	2	0	0

Licences are required by any person who uses any dog, gun, net or other engine for taking or killing any game, or any woodcock, snipe, quail or landrail, or conies, or deer. "Game" is not defined in the Act of 1860, but, *semble*, the definition of "game" in sect. 2 of the Game Act, 1831 (r), may be applied, and this includes hares, pheasants, partridges, grouse, heath or moor game, black game and bustards.

By sect. 5 of the Act of 1860, the following operations are excepted from the requirements as to licences for killing game:

(1) The taking of woodcock and snipe with nets or springs; (2) taking conies by the proprietor of a warren or of enclosed ground, or by the tenant of lands, either personally or by his direction or permission; (3) coursing hares with greyhounds, or hunting hares with beagles or other hounds; (4) hunting deer with hounds; and (5) taking and killing deer in enclosed lands by the occupier of them, or by his direction or permission. [1830]

A licence to kill game is not required by a person killing hares and rabbits in accordance with the provisions of the Ground Game Acts, 1880 and 1906, or of the Hares Act, 1848 (s). The following further exemptions are conferred by sect. 5 of the Act of 1860:

- (1) Members of the Royal Family;
- (2) Gamekeepers appointed by the Commissioners of Crown Lands on behalf of His Majesty;
- (3) Persons aiding or assisting a licensed person in taking or killing game (t).

Sect. 8 of the Act of 1860 (u) provides for the transfer of a gamekeeper's licence on a change of gamekeeper, and sect. 9 limits the validity of a gamekeeper's licence to the taking of game on land over which the employer has the right to kill game. Persons doing any act for which a licence to kill game is required must produce (subject to penalty) their licences, or give their names and addresses, on demand by an authorised officer or by owners of land, gamekeepers, etc. (sect. 10). By sect. 11 licences to kill game become void on conviction of the holder for any offence under sect. 30 of the Game Act, 1831 (v).

(p) The gamekeeper must also be licensed as a male servant.

(q) See also title GAME DEALERS in Vol. VI.

(r) 8 Halsbury's Statutes 1066.

(s) *Ibid.*, 1096, 1101 and 1083. See s. 4 of the Act of 1880 and s. 3 of the Act of 1848.

(t) This exemption covers a loader, beater or similar person; it does not cover a person who himself kills game, or e.g. when in company of a licensed person uses his own dog to take game.

(u) 8 Halsbury's Statutes 1088.

(v) *I.e.* "poaching"; *ibid.*, 1077.

A person dealing in game without an excise licence may be convicted whether or not he holds a licence to deal in game granted by a local authority (*a*). Dealers in imported game require an excise licence (*b*). [381]

Guns.—The Gun Licence Act, 1870 (*c*), imposes an annual duty of 10s. on every person who uses or carries a gun; and by sect. 2 "gun" includes a firearm of any description and an air-gun or any other kind of gun from which any shot, bullet, or other missile can be discharged. Licences are annual and expire on July 31 next following the date of issue (*d*).

The register of gun licences required by sect. 6 of the Act of 1870, is kept by the clerk of the county council (*e*).

The penalty for carrying a gun without a licence is £10; no penalty is incurred by a person carrying a gun in a dwelling-house or the curtilage thereof (*f*). Apparently "curtilage" should be read narrowly and would not extend beyond land which abuts upon the buildings.

By sect. 7 of the Act of 1870 the following persons are exempt from liability to take out a gun licence: (1) a person in naval or military service or in the police force using or carrying a gun in the performance of his duty or for target practice; (2) a person holding a current licence to kill game; (3) a person carrying a gun for a person holding a current game licence; (4) an occupier of lands using a gun for bird searing or vermin destroying, or a person scaring birds or killing vermin on lands by order of the occupier thereof, he being the holder of a licence to kill game or of a gun licence; (5) a gunsmith or gunsmith's employee carrying a gun in the ordinary course of his trade, or testing a gun in a place set apart for that purpose; (6) a person carrying a gun in the course of his business as a common carrier. The exemption granted to persons in naval or military service was extended to the Air Force by S.R. & O., 1918 (No. 548), I., p. 50.

Where a gun is carried in parts by two or more persons in company, each person is deemed to carry a gun (*g*). By sect. 9 provision is made for the production of licences on demand, and by sect. 10 power of entry on lands is given for the purpose of inspecting licences, if a person is seen to be using or carrying a gun. [382]

Administration and Recovery of Penalties.—The taxation statutes contain no powers of delegation to a committee, but local taxation functions may be delegated to a committee of a county or county borough council appointed under sect. 85 of the L.G.A., 1933 (*h*). A delegation to officers is limited by sect. 20 (3) of the L.G.A., 1888 (*i*), and art. 9 of the Order in Council of 1908, to delegation of such powers as prior to the transfer were exercised by officers of Inland Revenue.

Sect. 21 of the Inland Revenue Regulation Act, 1890 (*k*), applies to proceedings for the recovery of excise penalties in respect of the duty on local taxation licences, subject to the special provision (see *ante*,

(a) Revenue (No. 2) Act, 1861, s. 17; 16 Halsbury's Statutes 194.

(b) Customs and Inland Revenue Act, 1893, s. 2; 8 Halsbury's Statutes 1100.

(c) S. 3; *ibid.*, 1093.

(d) Customs and Inland Revenue Act, 1883, s. 6; 16 Halsbury's Statutes 538.

(e) Order in Council of 1908, Art. 4.

(f) Act of 1870, s. 7; 8 Halsbury's Statutes 1094.

(g) S. 8; *ibid.*, 1095.

(h) 26 Halsbury's Statutes 352.

(i) 10 Halsbury's Statutes 700.

(k) 16 Halsbury's Statutes 599.

p. 156) as to the recovery of penalties in dog licence cases by police officers. By sect. 21 (as applied to county councils), no proceedings for the recovery of any fine, penalty or forfeiture under any Revenue Act may be commenced except by order of the local authority (l). By sect. 24 all regulations, minutes and notices purporting to be signed by a secretary or assistant secretary of the Commissioners of Inland Revenue are *prima facie* evidence that they have been so signed and have been made and issued by the Commissioners, and the letter or instructions under which an officer acts is sufficient evidence of any order issued by the Commissioners and referred to therein. As applied to county councils, this section appears to provide an alternative method of proving the authorisation of selected officers, or the instructions of the local authority, by enabling evidence to be given by the production of a certificate signed by the clerk of the council, in lieu of producing the minute book under Part V. of the Third Schedule to the L.G.A., 1933 (m). Any such certificate produced as an authority to prosecute should be addressed to a selected officer by name and should refer to the minute of the council or committee authorising the prosecution. By sect. 24 (8) of the Act of 1890 (n), evidence of a person being reputed to be, or having acted as, a person employed in relation to Inland Revenue shall, unless the contrary be proved, be sufficient evidence of his appointment or authority. In practice it is desirable that every selected officer should be authorised by name in the minutes of the council, and should be furnished with a written authority signed by the clerk or town clerk.

A selected officer authorised for the purpose may prosecute, conduct or defend any revenue proceedings before a justice, although not a solicitor (o). A general penalty for obstruction of selected officers is imposed by sect. 11 of the Inland Revenue Regulation Act, 1890 (p).

Subject to the special provisions of the Revenue Acts, proceedings for penalties are regulated by the Summary Jurisdiction Act, 1879 (q), but the information must be laid in the name of a selected officer (r).

[333]

Sect. 35 of the Act of 1890 (s) gives county councils (in the exercise of the powers of the Commissioners) a general power of mitigating any fine or penalty imposed in respect of excise offences coming within the scope of their authority, and a like power of staying or compounding any proceedings. The power of compounding proceedings is widely used by county councils as a means of giving an offender an opportunity of paying a sum of money and, where necessary, taking out a licence, as an alternative to prosecution before a court of summary jurisdiction. Mitigation, remission, or compounding cannot be delegated to an officer, and it would appear to be an undesirable practice to demand a penalty in compromise unless the available evidence is so clear that the

(l) The power of ordering proceedings cannot be delegated to an officer (*Jones v. Wilson*, [1918] 2 K. B. 36; 39 Digest 237, 116). It would appear that each prosecution must be authorised separately by the council or by a committee to whom power has been delegated.

(m) Para. 3; 26 Halsbury's Statutes 501.

(n) 16 Halsbury's Statutes 600.

(o) Act of 1890, s. 27; 16 Halsbury's Statutes 601. But he could not conduct proceedings in those courts of quarter sessions where a solicitor has no right of audience. Cf. s. 277 of L.G.A., 1933; 26 Halsbury's Statutes 452.

(p) 16 Halsbury's Statutes 698.

(q) Sec. 53; 11 Halsbury's Statutes 351.

(r) Act of 1890, s. 21; 16 Halsbury's Statutes 509.

(s) 16 Halsbury's Statutes 603.

county council are prepared to take proceedings in court if the reduced penalty is not paid.

A court of summary jurisdiction can mitigate the prescribed penalty to any extent in the case of a first offence (*i*), or on a prosecution by a police officer for keeping a dog without a licence, see *ante*, p. 156. In the case of a second or subsequent offence the penalty cannot be mitigated by the justices below one-fourth of the statutory maximum (*u*). The previous conviction need not be charged in the information (*a*), but, *semble*, should be strictly proved. In summary proceedings the court may order costs to be paid by either party, in accordance with the Summary Jurisdiction Acts (*b*).

The informant in an excise prosecution has a right of appeal to quarter sessions (*c*). The procedure on appeal is regulated by the Summary Jurisdiction Act, 1879, as amended by the Summary Jurisdiction (Appeals) Act, 1933 (*d*). [331]

London.—The position in London is the same as elsewhere, except that the above-mentioned provisions of the L.G.A., 1933, do not apply. As regards delegation to committees, provisions similar to those of sect. 85 of the L.G.A., 1933, are contained in sect. 19 of the L.C.C. (General Powers) Act, 1934. The preliminary licence required by a game dealer under the Game Act, 1831 (see note (*n*), *ante*, p. 156, and title GAME), is issued by the justices. In all other matters, there being no county boroughs in London, the necessary duties are carried out entirely by the county council. [335]

(*i*) *I.e.* a first offence under a specific penal section, not a first excise offence generally; see s. 4 of Summary Jurisdiction Act, 1879; 11 Halsbury's Statutes 323.

(*a*) Excise Management Act, 1827, s. 78; 16 Halsbury's Statutes 105.

(*u*) *Murray v. Thompson* (1888), 22 Q. B. D. 142; 33 Digest 461, 1733. The previous conviction need not have been in the same year (*Phillips v. Stephens* (1898), 62 J. P. 789; 33 Digest 462, 1734). *Semble*, where there are two convictions on one day in respect of offences committed on different days the justices' power of mitigation of penalty on the second conviction is limited; cf. *Ex parte Fison & Sons*, [1899] 2 Q. B. 154; 30 Digest 48, 374.

(*b*) *Thomas v. Pritchard*, [1903] 1 K. B. 209; 33 Digest 365, 741.

(*c*) Excise Management Act, 1827, s. 82; 16 Halsbury's Statutes 105.

(*d*) 26 Halsbury's Statutes 545.

LOCOMOTIVES

See ROAD TRAFFIC.

LOCUS STANDI

See BILLS, PARLIAMENTARY AND PRIVATE.

LODGERS

See LOCAL GOVERNMENT ELECTORS.

LODGING-HOUSES

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See also titles : CLEANSING OF PERSONS ;
INFECTIOUS DISEASES ;
VAGRANCY.

Introductory.—Statutory provisions relating to “common lodging-houses” and “houses let in lodgings” are contained in the P.H.A., 1875 (*a*), the P.H.A. Amendment Act, 1907 (*b*), and the P.H.A., 1925 (*c*), but all these provisions will be repealed on October 1, 1937, when the P.H.A., 1936, comes into force. No adoption of this Act is necessary, and Part IX. (Common Lodging-Houses) extends to rural districts as well as urban areas. The sections of the Towns Improvement Clauses Act, 1847 (*d*), dealing with what were called “public lodging-houses,” now almost obsolete, are only in force in boroughs and urban districts where a local Act incorporating them is in force. Lodging-houses for the working classes may be provided under sect. 57 of the Housing Act, 1925 (*e*), replaced on January 1, 1937, by sect. 72 of the Housing Act, 1936.

As to the qualification of a lodger for the local government franchise, see title LOCAL GOVERNMENT ELECTORS, and as to the reception of wayfarers in casual wards, see CASUALS. [386]

Houses Let in Lodgings.—The statutory provisions as to “common lodging-houses” do not apply to houses in which part or the whole is let in lodgings, or occupied by members of more than one family, *i.e.* houses let in lodgings. Power to make bye-laws in respect of such houses was conferred on borough and district councils by sect. 90 of the P.H.A., 1875 (*f*), as amended by sect. 8 of the Housing of the Working Classes Act, 1885 (*g*). But at the present day bye-laws with respect to houses let in lodgings are in fact made under sect. 6 of the

- (*a*) *Ss.* 76—90 ; 13 Halsbury's Statutes 656—661.
- (*b*) *Ss.* 69—75 ; *ibid.*, 936—938.
- (*c*) *Ss.* 58—60 ; *ibid.*, 1140, 1141.
- (*d*) *Ss.* 116—118 ; *ibid.*, 569, 570.
- (*e*) 13 Halsbury's Statutes 1034.
- (*f*) *Ibid.*, 660.
- (*g*) *Ibid.*, 808.

Housing Act, 1925 (*h*), as extended by sect. 8 of the Housing Act, 1930 (*i*), and sect. 68 of the Housing Act, 1935 (*k*). Sect. 6 as extended empowers borough and district councils to make and enforce bye-laws with respect to houses intended or used for the occupation of the working classes for the various purposes mentioned in the section. The M. of H. has accordingly issued a series of model bye-laws (*l*) with respect to houses intended or used for occupation by the working classes and let in lodgings or occupied by members of more than one family. They deal with the following matters: (i.) registration and inspection; enforcement of drainage and promotion of cleanliness and ventilation; (ii.) the adequate and readily accessible provision of closet accommodation, water supply and washing accommodation, and accommodation for the storage, preparation and cooking of food; (iii.) the keeping in repair and adequate lighting of common staircases; (iv.) securing the prevention of and safety from fire; (v.) periodic cleaning and redecoration; (vi.) provision of handrails for staircases; and (vii.) securing the adequate lighting of rooms.

Originally bye-laws under sect. 6 of the Housing Act, 1925, could deal with overcrowding and the separation of the sexes, but this provision is repealed, together with the bye-laws made under it, by sect. 68 (3) of the Housing Act, 1935, as from the day on which that sub-section is brought into force in the area. It is intended that these matters should be governed by the general standard prescribed by sect. 2 and the First Schedule to the Act of 1935. Under sect. 68 (5) of the Housing Act, 1935, a new series of model bye-laws (*m*) for securing the improvement of housing conditions has been issued by the Ministry. These bye-laws take the place of Series XIIIc., but Series XIIIb. (see *ante*) is retained. In the memorandum of the Ministry which accompanies the New Series XIII., attention is called to the fact that in framing the bye-laws, the Minister has necessarily drawn upon experience obtained in the framing and enforcement in the past 60 years of bye-laws with respect to houses let in lodgings. [387]

Provision of Lodging-Houses by Local Authorities.—The provision by a local authority of housing accommodation for the working classes includes the provision of lodging-houses (*n*), and the local authority must, as respects such (that is to say, houses not occupied as separate dwellings) make sufficient provision by bye-laws under sect. 68 (2) of the Housing Act, 1925, or sect. 84 of the Housing Act, 1936, for their management and control, separation of sexes, prevention of damage, offensive language, nuisances, etc., and for determining the duties of officers, servants, etc. The procedure in making such bye-laws is now governed by sect. 250 of L.G.A., 1933 (*o*), the power to impose penalties for breach of bye-laws being contained in sect. 251 of the same Act. [388]

(*h*) 13 Halsbury's Statutes 1006.

(*i*) 23 Halsbury's Statutes 403.

(*k*) 28 Halsbury's Statutes 245. Replaced on January 1st, 1937, by s. 84 of the Housing Act, 1936.

(*l*) Series XIIIb. (1935). Published by H.M. Stationery Office, Kingsway, W.C.2, price 4d. net.

(*m*) Series XIIIc. Published by H.M. Stationery Office, Kingsway, W.C.2, price 3d. net.

(*n*) See Housing Act, 1925, s. 57 (*4*); 13 Halsbury's Statutes 1035; and Housing Act, 1936, s. 72 (*4*).

(*o*) 26 Halsbury's Statutes 440.

Common Lodging-Houses.—Statutory provisions relating to these houses as a class are the enactments in the P.H.As. referred to *ante*, on p. 161. The expression "common lodging-house" was not defined in the P.H.As., though sect. 89 of the P.H.A., 1875 (*p*), provides that it shall include, in any case in which only part of a house is used as a common lodging-house, the part so used of such house. This is no place to discuss at length the litigation that has taken place over the meaning of the term. The effect of most of the legal decisions is given on pp. 69, 70 of the Second Interim Report of the Local Government and Public Health Consolidation Committee (*q*), and a definition based on the existing law now appears in sect. 235 of the P.H.A., 1936. The Committee point out, however, that the requirement imposed by the existing decisions that some payment should be exacted in return for the accommodation afforded has been omitted from the definition.

If, in order to ascertain whether a house is a common lodging-house, it becomes necessary to consider whether the inmates are members of one family, the burden of proving this is on the person who alleges it (*r*).

Apart from the special statutory provisions relating to common lodging-houses it must be borne in mind that many of the general provisions of the P.H.As. relating to nuisances, sanitation and infected clothing, and also certain provisions of the Housing Acts relating *e.g.* to overcrowding, also apply to them. It has been decided that a registered common lodging-house is a "dwelling-house" within sect. 1 of the Housing Act, 1930 (*s*), and may be included as such in a clearance scheme (*t*). [389]

Infectious Disease.—Sects. 242—245 of the P.H.A., 1936, provide for the control of infectious disease in common lodging-houses. When a person in any such house is suffering from an infectious disease, the keeper must give immediate notice to the M.O.H. and also to the relieving officer within whose district the lodging-house is situate (sect. 242). A want of personal knowledge will not excuse a keeper, if his deputy was aware of the case (*u*). [340]

If the M.O.H. has reasonable grounds for believing that there is in a common lodging-house a person who is suffering, or who recently has suffered, from a notifiable disease (*a*), he may complain to a justice, who may by warrant authorise him to enter and examine any person found in the lodging-house (sect. 243). The removal to a hospital of a lodger, who is suffering from a notifiable disease (*a*), may be ordered by the local authority under sect. 244, if they are satisfied that serious risk of infection is thereby caused to other persons. Again, a court of summary jurisdiction, on the application of the local authority, may make an order under sect. 245 closing a common lodging-house on account of the existence or recent occurrence therein of notifiable disease. The repealed sect. 59 of the P.H.A., 1925, enacted that a keeper who had sustained loss by reason of his house being closed should be entitled to compensation from the authority. This provision has been omitted from sect. 245 of the Act of 1936, probably on the

(*p*) 18 Halsbury's Statutes 600.

(*q*) Cmd. 5059, price 2s.

(*r*) P.H.A., 1936, s. 248 (1).

(*s*) 28 Halsbury's Statutes 396. See now s. 25 of Housing Act, 1936.

(*t*) *Re Ross and Leicester Corpn.* (1932), 96 J. P. 459; Digest (Supp.).

(*u*) *Logsdon v. Holland* (1898), 14 T. L. R. 440; 85 Digest 211, 406.

(*a*) "Notifiable disease" is defined in s. 343 of the Act.

ground that the ease may be dealt with under the general provision for compensation in sect. 278. See also title INFECTIOUS DISEASES. [341]

Registration.—A person must not keep a common lodging-house or receive a lodger therein, unless he is registered as the keeper of the house (b), and a fine not exceeding £5 and not exceeding 40s. a day for a continuing offence, may be imposed by a court of summary jurisdiction under sect. 246 for a contravention of this provision. To allow time for the registration under the new Act of keepers who have registered under the repealed enactments, any existing registration in force on September 30, 1937, is continued in operation until January 1, 1938, by proviso (a) to sect. 236. Borough and district councils must keep registers containing the names and residences of the keepers and deputies of the keepers of all lodging-houses within their area, and the situation of every such house and the number of lodgers authorised to be received therein (c). It should be noted that if a part only of a house is used as a common lodging-house, that part alone is by sect. 235 to be deemed such a house. [342]

Before a common lodging-house is registered, it must be inspected by an officer of the council (d). By proviso (b) to sect. 238 (1) the council may refuse to register, or to renew the registration of an applicant, if they are satisfied (1) that he or any person proposed to be employed by him is not a fit person, whether by age or otherwise, to keep or to be employed at the common lodging-house; or (2) that the premises are not suitable for use as such a house or are not as regards sanitation and water supply and in other respects, including means of escape from fire, suitably equipped; or (3) that the use of the premises is likely to cause inconvenience or annoyance to persons residing in the neighbourhood. The requirement as to water supply is taken from sect. 81 of P.H.A., 1875; that as to means of escape from fire is new.

A registration remains in force for such period, not exceeding thirteen months, as may be fixed by the council, but may be renewed from time to time for a period not exceeding thirteen months at a time (sect. 238 (2)). There is no power to charge a fee for registration. [343]

An appeal lies to a court of summary jurisdiction under sect. 239 by a person aggrieved by a refusal to register or to renew registration. An applicant may require the council under sect. 238 (3) to deliver to him a written statement of the grounds on which his application was refused. By sect. 300 (2) the appeal must be made within twenty-one days of the council's refusal. An appeal to quarter sessions from the decision of the court of summary jurisdiction is given by sect. 301 of the Act. [344]

Keeper.—There is no statutory definition of "keeper of a common lodging-house," who is the keeper being a question of fact. The Law Officers of 1853 advised that mere acceptance of the rent, without the exercise of any control in the management, does not make the recipient a "keeper"; but an owner, though not resident in the house, who exercises control over its management in person or through an agent should be considered the "keeper" of it (e). How detailed,

(b) P.H.A., 1936, s. 236.

(c) *Ibid.*, s. 237. As to use of a copy of the entry as evidence, see s. 248 (2).

(d) *Ibid.*, s. 238.

(e) See note (c) on p. 163 of Lumley's Public Health, 10th ed.

multifarious and responsible are the duties imposed upon a keeper can be seen from a perusal of the series of model bye-laws issued by the M. of H. (f). On the conviction of a registered keeper of an offence under Part IX. of the P.H.A., 1936, or a bye-law made thereunder, the court may cancel his registration and order that he be disqualified for such period as the court thinks fit for being again registered (sect. 247).

On the death of a registered keeper, his widow or any other member of his family may under proviso (b) to sect. 236 continue to keep the house without being registered, for four weeks from the death, or such longer period as the council may sanction. By sect. 241 (2) either the keeper or a registered deputy must manage the lodging-house and exercise supervision over the inmates, and either the keeper or the registered deputy must be there between 9 p.m. and 6 a.m. [345]

Signboard.—The keeper of every common lodging-house must, if required by the council to do so, affix and keep undamaged and legible a notice with the words "Registered Common Lodging-House" in some conspicuous place on the outside of the house (g). [346]

Reports as to Vagrants.—Where a registered house is one in which beggars or vagrants are received, the council may, by notice in writing, require daily reports from the keeper as to all such persons resorting to the house during the preceding day or night, schedules being furnished to the keeper for that purpose (h). See also title VAGRANCY. [346A]

Notification of Illness.—See "Infectious Disease," ante, at p. 163, and in addition clause 6 of the model bye-laws of the M. of H. (i). A council may order the removal to hospital of a person suffering from a notifiable disease in a common lodging-house (k). [347]

Inspection.—The keeper of a common lodging-house, and every other person having or acting in the care or management thereof, when required by an authorised officer of the council must at all times allow the officer free access to all parts of the house under sect. 241 (4) of the Act (l). This right seems, however, to be subject to sect. 287 of the Act, and the officer must if required produce some duly authenticated document showing his authority, and it would seem that entry can only be claimed at a reasonable hour, notwithstanding the reference to "at all times" in sect. 241 (4). Special importance is attached by the M. of H. to such inspections. [348]

Bye-Laws.—By sect. 240 of the P.H.A., 1936, a council must make bye-laws as to common lodging-houses, if so required by the Minister of Health, and by sect. 812 the bye-laws must be confirmed by the Minister. The bye-laws may (1) fix the number of lodgers who may be received and deal with the separation of the sexes; (2) promote cleanliness and ventilation and require walls and ceilings to be lime-washed or otherwise treated at intervals; (3) provide for precautions when a case of infectious disease occurs; and (4) provide generally for the well ordering of common lodging-houses.

(f) See post, p. 166.

(g) P.H.A., 1936, s. 241 (1).

(h) *Ibid.*, s. 241 (3).

(i) See post, p. 166.

(k) See P.H.A., 1936, s. 244 (1), and clause 6 of the 1933 model bye-laws.

(l) As to the inspection of rooms adjacent to the licensed part of the premises, see *Gunn v. Cadenhead* (1888), 15 R. (Ct. of Sess.) (J. C.) 87.

The latest model series of the M. of H. is that of 1933 (*m*) from which it appears that measurement by floor space is now suggested in substitution for measurements by air space in the bye-law fixing the number of lodgers who may be received into a common lodging-house. These bye-laws, which are too detailed to be reproduced here, form a comprehensive code for the regulation of registered houses. With regard, however, to the procedure in the making and confirmation of bye-laws by the M. of H., it should be noted that sects. 182 to 187 of the P.H.A., 1875, have been replaced by sects. 250–252 of L.G.A., 1933 (*n*). [349]

Penalties for Offences.—Sect. 240 of the P.H.A., 1936, allows the imposition of fines not exceeding £5 and not exceeding 40s. a day for a continuing offence, for the offences described in the section. [350]

Seamen's Lodging-Houses.—Under sect. 214 of the Merchant Shipping Act, 1894 (*o*), borough and district councils whose area includes a seaport may, with the approval of the Board of Trade, make bye-laws relating to seamen's lodging-houses in their area, which are binding on all persons keeping houses in which seamen are lodged and upon the owners and persons therein employed. Such bye-laws, among other things, may provide for the licensing, inspection, and sanitary conditions of such houses, for the publication of the fact of a house being licensed, for the due execution of the bye-laws, for preventing obstruction, and for the exclusion from such houses of persons of improper character, and must impose fines not exceeding £50 for the breach of any bye-law. The bye-laws come into effect from a date therein named, and must be published in the *London Gazette* and in one newspaper at the least circulating in the area, named by the Board of Trade, and may be made, revoked or altered by that Board on the default of the council (*p*).

Penalties are also provided by sects. 215, 216 of the same Act for overcharges by keepers of seamen's lodging-houses, and for illegally detaining the money or effects of a seaman. [351]

London.—Common Lodging-Houses.—The Common Lodging Houses Acts, 1851 and 1853 (*q*), sect. 41 of the Sanitary Act, 1866 (*r*), and sects. 46, 49 of the Sanitary Law Amendment Act, 1874 (*s*), together with the Local Government Board's Provisional Orders Confirmation (No. 12) Act, 1894 (*s*), which transferred from the police to the L.C.C. the duty of executing the Common Lodging Houses Acts, are all repealed on October 1, 1936, when the P.H. (London) Act, 1936, comes into force.

Sects. 156–166 of the new Act provide for the licensing by the councils of metropolitan boroughs (exclusive of the City of London) of keepers of common lodging-houses, and for the renewal of licences, empower the L.C.C. to make bye-laws for the purposes described in sect. 162, subject to the confirmation of the Minister of Health, and contain other enactments which are very similar to those of the P.H.A.,

(*m*) May be purchased of H.M. Stationery Office, Kingsway, W.C.2, price 3d. net.

(*n*) 26 Halsbury's Statutes 440–443.

(*o*) 18 Halsbury's Statutes 238.

(*p*) *Ibid.*, s. 214 (4); 18 Halsbury's Statutes 239. See remainder of section for further provisions.

(*q*) 11 Halsbury's Statutes 882–887.

(*r*) *Ibid.*, 1005, 1006.

(*s*) 57 & 58 Vict. c. cxxiv.

1936, already described in this title. The keeper, or some substitute or deputy nominated by him and approved by the borough council, must reside constantly in the house and be present from 9 p.m. to 6 a.m., and a non-compliance with this enactment renders the keeper liable to a fine (sect. 161).

Any person aggrieved by the refusal of a borough council to grant or renew a lodging-house licence may appeal to a metropolitan police magistrate under sect. 159 of the Act, within fourteen days of the date of the refusal, and a person aggrieved by his decision may appeal under sect. 285 to quarter sessions. The bye-laws already made by the L.C.C. under sect. 53 of the L.C.C. (General Powers) Act, 1902 (i), remain for the present in force by virtue of sect. 307 of the Act of 1936.

Sect. 126 of the Act provides for the cleansing of inmates of a common lodging-house and their clothing. Sect. 212 allows a justice of the peace, on complaint by an M.O.H., to grant a warrant to enter and medically examine the inmates of a common lodging-house in which it is believed there is a person suffering, or who recently has suffered, from a notifiable infectious disease. [352]

Seamen's Lodging-Houses.—The law with regard to seamen's lodging-houses in London is similar to that for the rest of the country, with the exception that, under sect. 214 (7) of the Merchant Shipping Act, 1894(u), the local authority in the administrative County of London is the L.C.C. Bye-laws have been made by the Council in respect of these lodging-houses. By the Transfer of Powers (London) Order, 1933 (a), the enforcement of bye-laws made by the L.C.C. for seamen's lodging-houses, licensing and inspection of such lodging-houses and supervision of sanitary conditions were transferred to the metropolitan borough councils and the Common Council of the City of London.

Working Classes.—The powers as to the provision of lodging-houses for the working classes are similar to those applicable elsewhere. See *ante*, p. 162.

As to houses let in lodgings, see the title FLATS at p. 107 of Vol. VI.

[353]

(i) 11 Halsbury's Statutes 1250.

(u) 18 Halsbury's Statutes 239.

(a) S.R. & O., 1933, No. 114; 26 Halsbury's Statutes 613.

LONDON

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See also titles :

CITY OF LONDON ;
 COMMISSIONER OF POLICE OF THE METROPOLIS ;
 LEE CONSERVATORS ;
 LONDON BUILDING ;
 LONDON COUNTY COUNCIL ;
 LONDON FIRE BRIGADE ;
 LONDON, RATINGS IN ;

LONDON ROADS AND TRAFFIC ;
 LONDON SQUARES ;
 METROPOLITAN POLICE ;
 METROPOLITAN POLICE DISTRICT ;
 METROPOLITAN WATER BOARD ;
 POLICE, CITY OF LONDON ;
 PORT OF LONDON AUTHORITY ;
 THAMES CONSERVATORS.

INTRODUCTORY NOTE

It is impossible to speak of "London" in any strictly definitive sense as the word is capable of various meanings. As used in the popular sense it certainly appears to have no definition at all, and may mean the City of London or the County of London or Greater London. As distinguished from the rest of the country, "London" may mean the densely populated but undemarcated area near the mouth of the Thames ; but even as regards this area one hears of "London and the suburbs" without indication of where London ends and the suburbs begin. Strictly speaking, London is not even the capital city, for the seat of government is not in the City of London at all, but in the City of Westminster. The structure and interrelation of the authorities having jurisdiction in these areas are the result of many years of growth, generally upon no settled principle. This growth has been conditioned by the existence of certain rights and privileges which local authorities have always been vigilant in guarding. The difficulty of making any extensive alteration in the existing state of affairs without sacrificing the benefit of established administration may

be seen by a perusal of the Report of the Royal Commission on London Government (*a*). The disproportionate concentration of population in Middlesex and the adjoining parts of the neighbouring counties has made it necessary to treat many problems of government and public service in that area in a manner differing from that adopted in the rest of the country. Two points should be particularly noted: (i.) the ordinary system of local government has not been applied to the centre of this area; (ii.) certain administrative functions have been entrusted to bodies having no real parallel elsewhere. These functions—for example police, water supply and passenger transport—have not, in the rest of the country, where the population is comparatively sparse, reached such a degree of complexity that they require the unified control which has been found necessary in this area. The difficulties caused by the difference between the area suitable for the general administration of the local authorities and the areas suitable for the administration of the different services have not elsewhere become so intense that minor local adjustments are not capable of reconciling them. In the London area, however, these difficulties have not always proved capable of such solutions. The result has been the establishment of various special authorities whose areas being designed for the purposes of the particular service concerned bear no relation to each other and sometimes no relation to the other areas of local government.

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This article must therefore comprehend a number of different authorities, each interacting upon the others and none exercising complete control over the others. To illustrate the maze of different areas Fig. 1 (*b*) shows the L.C.C. and Metropolitan Borough Council areas and Fig. 2 (*b*) the areas of some of the authorities having various powers and functions within London, Greater London and the surrounding country.

The word "London," when not defined or limited by the context, means strictly the City of London, but the context may alter this significance (*c*). In modern legislation "London" is usually defined as the administrative County of London. (See *post*, for meaning of this term.) [355]

Up to 1855 local administration in London outside the City was governed by vestries; to enable town management to be dealt with commissioners or trustees had been created *ad hoc*, and in 1855 there were some 800 bodies operating under about 250 private Acts. Under the Metropolitan Buildings Act, 1844 (*d*), and the Metropolitan Commissioners of Sewers Act, 1848 (*e*), authorities had been appointed with jurisdiction for special purposes over areas outside the City. The Metropolitan Management Act, 1855 (*f*), made provision for vestries for larger parishes and district boards for groups of smaller parishes; and the Metropolitan Board of Works was created to exercise jurisdiction over the whole of the metropolis, as defined in the Act, including the City. This Board was elected by the vestries, district boards and the City Corporation. The Board had powers relating to main drainage,

(a) 1928, Cmd. 1830.

(b) See *post*, pp. 170, 172. It will be appreciated that the areas represented on these maps have not been drawn to scale, but in proportion to the size and shape of the page.

(c) *Mallan v. May* (1844), 13 M. & W. 511; 34 Digest 575, 3.

(d) 7 & 8 Vict. c. 84.

(e) 11 & 12 Vict. c. 112.

(f) 11 Halsbury's Statutes 889.

building regulation and other powers of a general metropolitan character, including certain supervision of the finances of the vestries and district boards. The metropolis, as defined in the Act above-mentioned, was formed into an administrative county by the L.G.A., 1888 (*g*); the Metropolitan Board of Works was abolished and its powers transferred to a newly-created L.C.C. Under the London Government Act, 1899 (*h*), the vestries and district boards were superseded by the twenty-eight metropolitan borough councils (including the City Council of Westminster). [356]

The London provided for by these enactments may therefore be considered an agglomeration of twenty-eight contiguous towns and one city formed into an administrative county, which does not, however, include by any means the whole of the huge urban area which has grown up around the ancient city. The administration of certain public services extends over areas, specially defined for each respective service, which include large portions of extra-London counties and county boroughs. Thus the areas for the purposes of police, water supply, main drainage, passenger transport, road traffic, and electricity supply extend considerably beyond the administrative county (see Fig. 2). The term "Greater London" has been applied to these out-county areas, but the term lacks precision, not only because no statutory definition has been given to it, but also because the areas referred to are far from coincident. The term "Greater London" is used in the publications of the Registrar-General for census and other purposes, and is there used as meaning the Metropolitan Police Area. A Royal Commission, presided over by Lord Ullswater, was appointed in 1921 to inquire and report on the local administration of Greater London. The report of the Commission, issued in 1923 (*i*), is a most interesting document, although many of the conditions which it describes have been altered by subsequent legislation. [357]

AREAS

The principal areas into which the administrative County of London and the surrounding area are divided are as follows:

1. *Areas of Local Government.* The *City of London* (see title CITY OF LONDON) includes all parts formerly within the jurisdiction of the Commissioners of Sewers for the City of London (*j*). This area is within the administrative County of London, and is administered by the City Corporation, except as regards certain general county services which are administered by the L.C.C. The City is a separate county for non-administrative purposes and has its own sheriffs and quarter sessions. It is a separate coroner's district and petty sessional division. It has its own police force under a commissioner, and it should be noted that the City bridges are included in this police area (*k*). The City of London has jurisdiction outside its area over

(*g*) S. 40; 10 Halsbury's Statutes 718.

(*h*) 11 Halsbury's Statutes 1225.

(*i*) 1923, Cmd. 1830.

(*j*) Metropolitan Management Act, 1855, s. 250; 11 Halsbury's Statutes 946; City of London Sewers Act, 1848, s. 202; 11 & 12 Vict. c. cxlii.

(*k*) See title POLICE, CITY OF LONDON. By ss. 3, 59 of 2 & 3 Vict. c. xxiv., the area is the City of London and so much of the liberties of the City as is not included in the Metropolitan Police District. The latter district may be altered under s. 2 of the Metropolitan Police Act, 1839; 12 Halsbury's Statutes 707. It was so altered by an Order in Council dated January 3, 1840.

certain open spaces. The corporation have power to acquire open spaces within twenty-five miles from the boundary of the City and subsequently to manage them (*l*). They have exercised this power and have been granted special powers over other open spaces outside their area (*m*). [358]

The *Administrative County of London* was created by the L.G.A., 1888 (*n*), out of the "Metropolis," as defined in the Metropolis Management Act, 1855 (*o*), i.e. the City of London and certain portions of the counties of Middlesex, Surrey and Kent. Its administration and financial business is entrusted to the L.C.C., as to which see title LONDON COUNTY COUNCIL. [359]

The *County of London* is the administrative county less the City, and is a separate county for non-administrative purposes, with a sheriff, commission of the peace and quarter sessions (*p*). It is divided into sixteen petty sessional divisions and eight coroners' districts. The metropolitan police court area covers the county, except the northern part of the borough of Hampstead. [360]

The *Metropolitan Boroughs*, twenty-eight in number, occupy the area of the administrative county, exclusive of the City. Each borough has a council, established and incorporated by Orders in Council made under the London Government Act, 1899 (*q*), as "The Mayor, Aldermen and Councillors of the Metropolitan Borough of " (see title METROPOLITAN BOROUGHs). Kensington, however, has "Royal" instead of "Metropolitan" in its title (Letters Patent, November 18, 1901), and Westminster is a City (Letters Patent, October 27, 1900); the functions of these two authorities for local government purposes are not, however, materially affected thereby.

A metropolitan borough is not incorporated as to the whole of its burgesses, as is a provincial borough—only the council are incorporated (*r*)—nor is a metropolitan borough "a borough" within the meaning of any Act passed before 1899 (*s*). Again, all the councillors of a metropolitan borough retire in a body every three years, in contrast with the boroughs outside London, where elections are held each year for one-third of the number of councillors. This is on account of sect. 2 (8) of the London Government Act, 1899 (*t*), of which all boroughs have taken advantage, allowing the Local Government Board to make an order for triennial elections instead of annual elections of one-third of the council. A further difference is that the accounts of all metropolitan borough councils are subject to audit by the district auditor (*u*), and there is no office of borough auditor in London. [361]

The *Inner Temple and the Middle Temple* are small areas situated between the Cities of London and Westminster and the River Thames. The London Government Act, 1899, which provided that each parish outside the City should be situated in some metropolitan borough,

(*l*) Corp'n. of London (Open Spaces) Act, 1878; 41 & 42 Vict. c. cxxvii.

(*m*) See Vol. III., p. 188.

(*n*) Ss. 40, 100; 10 Halsbury's Statutes 718, 760.

(*o*) Ss. 250, Schedules (A), (B), (C); 11 Halsbury's Statutes 946, 948.

(*p*) L.G.A., 1888, s. 40 (2); 10 Halsbury's Statutes 718.

(*q*) 11 Halsbury's Statutes 1225.

(*r*) London Government Act, 1899, s. 1; 11 Halsbury's Statutes 1225.

(*s*) *Ibid.*, s. 81 (1); *ibid.*, 1240.

(*t*) 11 Halsbury's Statutes 1226.

(*u*) L.G.A., 1933, s. 210; 20 Halsbury's Statutes 421.

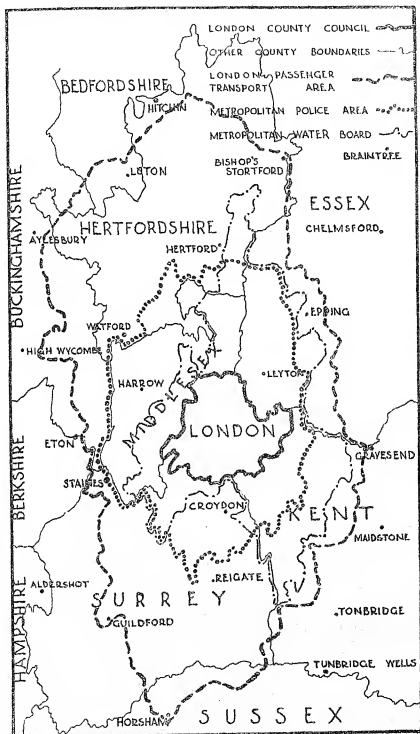


FIG. 2.

also provided (a) that the Temples should, for the purposes of the Act, be deemed to be within the City. Hence the Temples were not absorbed into any other areas, and they still retain their identity as separate sanitary districts, rating areas (see title LONDON, RATING IN), and parishes. They are administered in each case by bodies known as "The Masters of the Bench of the Honourable Society of the Temple." These bodies are close corporations, vacancies being filled by co-option. They maintain no public highways; all streets (other than a portion of the Thames Embankment which is maintained by the Westminster City Council) being private and closed regularly. The position of the Temples is made peculiar by the fact that the whole of the area (other than certain rateable hereditaments such as gas and water mains) is the property of the Masters of the Bench. Arrangements with regard to police, house refuse collection and other services are made with the City Corporation, and rate collection is provided for by private agreement between the L.C.C. as precepting authority for the county rate, the City Corporation, in respect of the services above-mentioned, and the rateable occupiers. The Temples, together with Lincoln's Inn and Gray's Inn, are excluded from the scope of the London Building Act, 1930 (b), except as regards lines of building frontage abutting on public streets. They are also excluded from many other private Acts affecting London. [362]

2. *Ad hoc Authorities.* The Metropolitan Police District, as established by the Metropolitan Police Acts, 1829 and 1889 (c), consisted of all parishes and places (excluding the City and the Temples) any part of which was within a radius of twelve miles, or the whole of which was within a radius of fifteen miles, from Charing Cross, together with all parishes in the Central Criminal Court district (see Central Criminal Court Act, 1834 (d)) and nine parishes wholly outside the twelve-mile radius and partly outside the fifteen-mile radius. The county review orders under the L.G.A., 1929, having for their object the revision of local areas, expressly provided that nothing in them should be deemed to alter the area of the metropolitan police district. The result is that, consequent upon the adjustment of boundaries, in a few instances the metropolitan police district boundary now goes through a parish. The metropolitan police district is under the jurisdiction of a commissioner appointed by the Home Secretary (see titles COMMISSIONER OF POLICE OF THE METROPOLIS; METROPOLITAN POLICE DISTRICT; and METROPOLITAN POLICE). [368]

The City of London Police District consists of the City of London (including the City bridges) and the two Temples, see *ante*, p. 171. The City police are under the jurisdiction of the City Corporation (see title POLICE, CITY OF LONDON). [364]

The Port of London is defined by the Port of London (Consolidation) Act, 1920 (e), as amended by the Port of London (Various Powers) Act, 1932 (f), and extends from the sea to Teddington-on-Thames. It is administered by the Port of London Authority (see that title), but the City Corporation is the port sanitary authority (see title CITY OF LONDON). [365]

(a) By s. 22; 11 Halsbury's Statutes 1237.

(b) By s. 228; 23 Halsbury's Statutes 331.

(c) 12 Halsbury's Statutes 748, 767.

(d) 4 Halsbury's Statutes 31.

(e) S. 2; Sched. I.; 18 Halsbury's Statutes 593, 745.

(f) S. 22; 25 Halsbury's Statutes 701.

The Metropolitan Water Board area comprises the administrative county and large parts of Essex, Hertford, Kent, Middlesex and Surrey, extending from Ware in the north to Westerham in the south, and from Sunbury in the west to Southfleet in the east. Water supply is the function of the Metropolitan Water Board (see that title). [266]

London and Home Counties Electricity District comprises the whole of the administrative counties of London and Middlesex and parts of Hertford, Essex, Kent, Surrey, Buckinghamshire and Berkshire. For the purpose of electricity supply the London and Home Counties Joint Electricity Authority exercises powers in this area (see Vol. V., p. 306). [267]

The London Passenger Transport Area, in which the London Passenger Transport Board exercises control of public transport, is a specially defined area extending from Luton, Baldoek and Bishop's Stortford in the north to Horsham and East Grinstead in the south, and from Brentwood and Tilbury in the east to High Wycombe and Windsor in the west (see title LONDON ROADS AND TRAFFIC). [268]

The London Traffic Area, which is under the supervision of the London and Home Counties Traffic Advisory Committee, also extends far beyond the administrative county. It is not coincident with the London Passenger Transport area (see title LONDON ROADS AND TRAFFIC). [269]

The Metropolitan Traffic Area, over which the Metropolitan Police Commissioner and a Traffic Commissioner exercise functions, includes the London Passenger Transport Area and the London Traffic Area, with the addition of certain small adjoining urban districts (see title LONDON ROADS AND TRAFFIC). [270]

The Lee Conservancy Catchment Area is under the jurisdiction of the Lee Conservancy Catchment Board and includes part of the county of London (see title LEE CONSERVATORS). [271]

The Thames Conservancy Area, which is under the jurisdiction of the Conservators of the River Thames, was restricted (g) to the river above the landward limit of the Port of London and so does not affect the central part of the thickly populated area (see title THAMES CONSERVATORS). [272]

8. Miscellaneous Areas. *A joint committee* known as the Metropolitan Boroughs' Standing Joint Committee has been appointed by the City and metropolitan borough councils for the purpose of considering matters affecting their common interest (see title METROPOLITAN BOROUGH'S STANDING JOINT COMMITTEE). [273]

The assessment areas are the City (including the two Temples) and each metropolitan borough. For each area an assessment committee is appointed (h). [274]

The Parliamentary Boroughs are the City of London, which returns two members to Parliament, and the metropolitan boroughs. The metropolitan boroughs are in certain cases divided into electoral divisions, each returning one member. The total number of members returned from the metropolitan boroughs is sixty. The University of London returns one member. The county electoral divisions are the same as the Parliamentary divisions. [275]

(g) By s. 7 of the Port of London Act, 1908; 8 Edw. 7, c. 68.

(h) L.G.A., 1929, s. 18 (h); 10 Halsbury's Statutes 805.

Metropolitan parishes have practically ceased to exist except in a few boroughs for purposes connected with rating (see title LONDON RATING) and church matters (see title PARISH). [376]

The *London main drainage area* comprises the administrative county together with eight entire urban districts and parts of ten others (see title SEWERAGE AUTHORITIES). [377]

LONDON LAW

It will have been noticed from the foregoing statement that the organisation of London for local government purposes presents certain peculiarities. The absence of county boroughs or county districts within the geographical area of the administrative county will have been observed. The mode of creation of the county council and the metropolitan borough councils was unusual and has had the result of bringing into being authorities which have no exact counterpart in other local government areas. In addition, there are the special bodies created to deal with police, water supply, traffic and passenger transport, and electricity. The powers of all these various bodies and their relation to one another are provided for in public and private statutes and statutory orders, some of which apply only to London, others of which are of general application to the whole country in common with London, while others which apply to the country generally contain special provisions making modifications with regard to London. The result is that London law in many respects has the features of a separate code of legislation; for instance, the law relating to public health in London is now consolidated by the P.H. (London) Act, 1936; the law relating to control of building is contained in the London Building Act, 1930 (see title LONDON BUILDING); the law relating to highway and street management is provided mainly by the Metropolis Management Acts, 1855 to 1890 (i); in addition there are numerous Acts, both public and private, which confer special powers on the various London authorities, either individually or in varying combinations. Of these may be mentioned the annual General Powers Acts of the L.C.C., which, though local Acts, are equivalent in effect to public statutes in that they confer on the council, as well as other London authorities, powers which as regards the rest of the country are frequently dealt with in public Acts. On the other hand, certain enactments which apply to the country exclude London from their provisions. The P.H. Acts, which only partly applied to London, do not as from the passing of the P.H. (London) Act, 1936, apply to London in any great degree. The L.G.A., 1933, except Parts X. (Accounts and Audit) and XI. (Local Financial Returns) (k), and the provisions relating to joint committees (see sect. 97), does not apply to London. Provisions relating to most of the matters dealt with in the Act of 1933 must be looked for in the Municipal Corporations Act, 1882 (l), the L.G.A., 1894 (m), and the L.G.A., 1888 (n), which have been applied to London with modifications by the L.G.A., 1888, and the London Government Act, 1899 (o), and still further added to by General Powers Acts of the

(i) See 11 Halsbury's Statutes 889—1017.

(k) 26 Halsbury's Statutes 424, 437.

(l) 10 Halsbury's Statutes 576.

(m) *Ibid.*, 778.

(n) *Ibid.*, 686.

(o) 11 Halsbury's Statutes 1225.

L.C.C. The law spread in this way over a number of statutes thus interrelated and modified, is in urgent need of revision, and consolidation and amending legislation is under consideration. [378]

London legislation therefore presents an unusually complex picture. For many purposes the powers of London authorities are similar to those conferred on other local authorities; but for other purposes differences exist in varying degree and it is always unsafe to assume that any enactment applying to other local authorities has a similar application to London, or even a corresponding provision. For this reason a note where necessary has been appended to the articles throughout this work indicating those differences and similarities. The particular powers and constitution of each London authority are described in the respective titles referring to those authorities. Reference may be made, for instance, to the titles LONDON COUNTY COUNCIL, CITY OF LONDON, METROPOLITAN BOROUGH, METROPOLITAN BOROUGH'S STANDING JOINT COMMITTEE, COMMISSIONER OF POLICE OF THE METROPOLIS, METROPOLITAN POLICE, POLICE (CITY OF LONDON), METROPOLITAN WATER BOARD, PORT OF LONDON AUTHORITY, LEE CONSERVATORS, HOSPITAL SERVICES (LONDON), LONDON BUILDING, LONDON (RATING IN), LONDON SQUARES, LONDON ROADS AND TRAFFIC, PUBLIC ASSISTANCE IN LONDON. [379]

The following tables are appended showing in brief outline the distribution of powers among London local authorities. The tables do not purport to be complete and are intended to provide, for convenience, no more than a general idea. Details and statutory references must be looked for in the London notes to the various titles. [380]

TABLE I.—AUTHORITIES IN LONDON, THEIR AREAS AND FUNCTIONS.

Authority.	Area.	Functions.
L.C.C.	The administrative county (117 square miles).	The following services are administered by the L.C.C. over the whole of the administrative county, including the City: Education, fire protection, public assistance, main drainage, hospitals, licensing of places of public entertainment. For other services the City corporation has jurisdiction in the City and the L.C.C. for the rest of the administrative county (see Table II).
City of London Corporation.	The City of London (one square mile).	For certain purposes has functions in the City similar to those which the L.C.C. has for the rest of the county. For other purposes has powers similar to those of metropolitan borough councils. The City corporation is the Port sanitary authority.
Twenty-eight metropolitan borough councils.	Together equal to the county (exclusive of the City), 116 square miles.	Local powers, including maintenance of streets, sanitary powers, drainage, public libraries, baths, inspection of food and drugs, certain subsidiary functions with regard to buildings and housing (see Table II).

Authority.	Area.	Functions.
The Masters of the Bench of the Inner Temple.	0.02 square miles.	The Temples are separate parishes for rating purposes with separate rating authorities (see title (LONDON, RATING IN). They are sanitary districts (see ante), p. 174. Revision of valuation lists.
The Masters of the Bench of the Middle Temple. Twenty-nine assessment committees.	0.01 square miles. Area coincides with each metropolitan borough and the City (including the Temples).	
London Old Age Pensions Committee. Insurance Committee for the County of London. Metropolitan Water Board.	The administrative county. The administrative county. Metropolitan water area, 573 square miles.	See title OLD AGE PENSIONS COMMITTEES. See title NATIONAL HEALTH INSURANCE COMMITTEES. Water supply.
London and Home Counties Joint Electricity Authority.	1,841 square miles.	General oversight of electricity supply.
London Passenger Transport Board.	1,975 square miles.	Provision of passenger transport.
London and Home Counties Traffic Advisory Committee.	London traffic area, 1,820 square miles.	To improve the regulation of traffic.
Port of London Authority.	Port of London.	Administration and improvement of the port.
Lee Conservancy Board.	Area extending partly within and partly without the administrative county.	Conservancy powers over the River Lee.
Lee Conservancy Catchment Board.	Lee Catchment area, 548 square miles, includes part of the administrative county.	Land drainage.
Commissioner of Police for the Metropolis.	Metropolitan police district, 691 square miles.	Police.
Commissioner of the City of London Police.	City police district.	Police.
Justices of the Peace, 840 for the County, 29 for City.	County of London. City of London.	Licensing and other judicial functions.

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TABLE II.—DIVISION OF FUNCTIONS BETWEEN THE L.C.C., CITY CORPORATION AND THE METROPOLITAN BOROUGH COUNCILS.

(In cases where the L.C.C. and the City Corporation are authorities, the City Corporation has the powers for the City and the L.C.C. for the rest of the County.)

Advertisements :

(a) Generally	-	-	-	{ L.C.C. outside City. City Corporation for City.
(b) Sky-signs	-	-	-	{ M.B.Cs. and City Corporation.
Ambulances	-	-	-	{ L.C.C. and City Corporation.
Baths and washhouses	-	-	-	{ M.B.Cs. and City Corporation.
Bridges, county	-	-	-	{ L.C.C.
Bridges, city	-	-	-	{ City Corporation.

Building, control of	-	-	-	-	L.C.C., but M.B.Cs. and City Corporation have minor powers.
Burial grounds	-	-	-	-	M.B.Cs. and City Corporation.
Bye-laws for good rule	-	-	-	-	L.C.C., City Corporation and M.B.Cs., but those of L.C.C. have pre-eminence.
Bye-laws for public health	-	-	-	-	All authorities for varying purposes.
Celloid and film stores, control of	-	-	-	-	L.C.C. and City Corporation.
Clocks, public provision of	-	-	-	-	M.B.Cs.
Common lodging-houses:					
(a) Bye-laws	-	-	-	-	L.C.C.
(b) Licensing	-	-	-	-	M.B.Cs.
Cow-houses, slaughter-houses, etc.,					
licensing, etc.	-	-	-	-	M.B.Cs.
Dairies	-	-	-	-	M.B.Cs. and City Corporation.
Diseases of animals	-	-	-	-	L.C.C. and City Corporation.
Disinfection	-	-	-	-	M.B.Cs. and City Corporation.
Drains	-	-	-	-	M.B.Cs. and City Corporation.
Education	-	-	-	-	L.C.C.
Electors' register	-	-	-	-	M.B.Cs. and City Corporation.
Electricity	-	-	-	-	16 M.B.Cs. are suppliers; L.C.C. and City Corporation have powers as to inspection, testing, etc.
Employment agencies, licensing	-	-	-	-	L.C.C. and City Corporation.
Entertainments, licensing	-	-	-	-	L.C.C.
Epidemic diseases prevention	-	-	-	-	M.B.Cs. and City Corporation.
Explosives	-	-	-	-	L.C.C. and City Corporation.
Factories and workshops (general powers)	-	-	-	-	M.B.Cs. and City Corporation.
Fire brigade	-	-	-	-	L.C.C.
Food and drugs	-	-	-	-	M.B.Cs. and City Corporation.
Gas testing	-	-	-	-	L.C.C. and City Corporation.
Health visitors	-	-	-	-	M.B.Cs. and City Corporation.
Highways	-	-	-	-	M.B.Cs. and City Corporation.
Hospitals	-	-	-	-	L.C.C. (M.B.Cs. and City Corporation have certain minor powers).
Housing:					
(1) Individual insanitary houses	-	-	-	-	M.B.Cs. and City Corporation.
(2) Obstructive dwellings	-	-	-	-	M.B.Cs. and City Corporation.
(3) Clearance areas	-	-	-	-	L.C.C., M.B.Cs. and City Corporation.
(4) Overcrowding and reconditioning	-	-	-	-	L.C.C., M.B.Cs. and City Corporation.
(5) Provision of houses	-	-	-	-	L.C.C., M.B.Cs. and City Corporation.
(6) Review of housing conditions	-	-	-	-	L.C.C., M.B.Cs. and City Corporation.
(7) Redevelopment areas	-	-	-	-	L.C.C., M.B.Cs. and City Corporation.
(8) Purposes not specifically provided for	-	-	-	-	L.C.C., M.B.Cs. and City Corporation.
Infant life protection	-	-	-	-	M.B.Cs. and City Corporation.
Infectious disease, notification and prevention	-	-	-	-	M.B.Cs. and City Corporation.
Libraries	-	-	-	-	M.B.Cs. and City Corporation.
Lighting streets	-	-	-	-	M.B.Cs. and City Corporation.
Local land charges	-	-	-	-	All authorities for different purposes.
Massage establishments, control	-	-	-	-	L.C.C. and City Corporation.
Maternity and child welfare	-	-	-	-	M.B.Cs. and City Corporation.
Medical assistance for poor persons	-	-	-	-	M.B.Cs. and City Corporation.
Mental defectives	-	-	-	-	L.C.C.
Mental hospitals	-	-	-	-	L.C.C. and City Corporation.
Milk and dairies	-	-	-	-	M.B.Cs. and City Corporation, but L.C.C. as to tuberculous milk.
Midwives	-	-	-	-	L.C.C.
Mortuaries	-	-	-	-	M.B.Cs. and City Corporation.
Motor vehicles registration	-	-	-	-	L.C.C.
Nuisances	-	-	-	-	M.B.Cs. and City Corporation.
Nursing homes registration	-	-	-	-	L.C.C. and City Corporation.
Offensive trades	-	-	-	-	M.B.Cs. and City Corporation.
Old age pensions	-	-	-	-	L.C.C.
Open spaces	-	-	-	-	All authorities.
Petroleum	-	-	-	-	L.C.C. and City Corporation.
Public assistance	-	-	-	-	L.C.C.
Rating and valuation	-	-	-	-	M.B.Cs. and City Corporation.

Refuse removal	-	-	-	-	M.B.Cs. and City Corporation.
Sewers:					
(1) Main	-	-	-	-	L.C.C.
(2) Local	-	-	-	-	M.B.Cs. and City Corporation.
Shops	-	-	-	-	L.C.C. and City Corporation.
Slaughter-houses and slaughterees,					
licensing	-	-	-	-	M.B.Cs.
Small dwellings acquisition	-	-	-	-	L.C.C. and M.B.Cs.
Street naming and numbering	-	-	-	-	L.C.C.
Street trading, licensing of	-	-	-	-	M.B.Cs. (L.C.C. and City Corporation are authorities for the purposes of the Shops Acts and Children and Young Persons Acts).
Trees in streets	-	-	-	-	M.B.Cs.
Town planning	-	-	-	-	L.C.C. and City Corporation.
Tuberculosis	-	-	-	-	L.C.C. for institutional treatment. M.B.Cs. and City Corporation for dis- pensary treatment.
Vaccination	-	-	-	-	M.B.Cs. and City Corporation.
Weights and measures	-	-	-	-	L.C.C. and City Corporation.

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LONDON AND HOME COUNTIES TRAFFIC ADVISORY COMMITTEE

See LONDON ROADS AND TRAFFIC.

LONDON BUILDING

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See also the portions relating to London of the following titles: CONTROL OF ELEVATION (pp. 44, 45 of Vol. IV.), DANGEROUS BUILDINGS (pp. 288—291 of Vol. IV.), DENSITY OF BUILDINGS (p. 340 of Vol. IV.). For sky signs see ADVERTISEMENTS at p. 144 of Vol. I.

Introductory.—This article covers the matters dealt with in the London Building Act, 1930, and the amending Act of 1935 (a). These Acts, which are to be construed as one Act, make provision for the

(a) The Act of 1930 is printed at 29 Halsbury's Statutes 213—355, and the Act of 1935 at 29 Halsbury's Statutes 139—148. It seems unnecessary in this title to indicate the page on which a particular section appears, and references to the Act of 1930 or the Act of 1935 should be read as relating to the Acts already mentioned.

control of building operations, the position and structural form of buildings, the laying out, naming and numbering of streets and various matters relating to streets and buildings.

In its widest sense, the control of buildings extends beyond the matters dealt with in the Acts. The main consideration which calls for control is the safety and welfare of the community, but these advantages are not secured merely by the provisions of the Acts of 1930 and 1935 as to stability, light, air space and fire protection. Sanitation, drainage, the prohibition and suppression of unhealthy buildings and areas, the provision of adequate housing accommodation, the planning of towns so as to secure amenities by the proper disposition of residential and factory areas and by the provision of adequate traffic facilities and open spaces, are all factors to be borne in mind. In addition, the regulation of special buildings, such as petrol stations and buildings used for offensive and dangerous trades, is also material. These features are either ignored in the London Building Acts or dealt with only in part. Provisions relating to these matters must be sought in other enactments, such as the Acts relating to public health, housing, town planning, road improvements, offensive trades, sewage and drainage. [383]

Part II. of the Act of 1930, for instance, deals with the formation and widening of streets, but these provisions relate only to new streets and to the widening, alteration and adaptation of ways to purposes for which they were not formerly used. The Act does not deal with high-way improvements. The lines of building frontage provided for in Part III. of the Act are, as indicated in the preamble to the Act, for the purpose of securing a proper width and direction of streets, but the Act is not concerned with town planning. In London town planning schemes may override the Building Acts for certain purposes. High-way improvements cannot be effected under the Building Acts, for the Acts provide for the definition of a building line only in the first instance, and although they deal with dangerous and neglected structures, they do not touch premises which are unfit for human habitation or dangerous owing to disease, dirt or insanitary conditions. As to these aspects of building control, reference should be made to other appropriate titles of this work. [384]

History of Building Control in London.—The history of legislation with regard to building in London goes back to the Middle Ages, but for practical purposes the Act passed in 1606 (*b*), and entitled "An Act for Rebuilding the City of London," which was passed in consequence of the Fire of London, may be taken as the starting point. Later many Acts were passed dealing with the supervision of buildings outside the City of London.

By the Metropolis Management Act, 1855 (*c*), and the Metropolitan Building Act, 1855 (*d*), the control of building was vested mainly in the Metropolitan Board of Works. This control was subsequently strengthened by various amending statutes. Sect. 40 (*e*) of L.G.A., 1888 (*e*), transferred the powers and duties of the Metropolitan Board of Works to the newly created L.C.C. Shortly afterwards the work of consolidating and revising the various enactments relating to streets and buildings was taken in hand, and the outcome was the London

(*b*) 18 & 19 Car. 2, c. 8.

(*d*) 18 & 19 Vict. c. 122.

(*c*) 11 Halsbury's Statutes 889—958.

(*e*) 10 Halsbury's Statutes 719.

Building Act, 1894 (f). During the period 1894 to 1930 no less than twelve amending Acts were passed, the more important dealing with means of escape in case of fire, cubical extent of buildings, metal-framed and reinforced concrete construction, and district surveyors' fees. The Act of 1894 and amending Acts were again consolidated by the London Building Act, 1930 (g). Since then, sect. 201 of the Act of 1930, which relates to officers of the tribunal of appeal, has been amended by sect. 48 of the L.C.C. (General Powers) Act, 1931 (h), and the provisions of the Act of 1930 as to the construction of buildings and structures have been amended by the London Building Act (Amendment) Act, 1935 (i). The keynote of this last Act is that where regulations as to the construction of the walls, chimneys, staircases and other features of buildings are contained in an Act, the amendment of the Act becomes necessary from time to time to meet changes in the methods of building. Outside London, the corresponding regulations are contained in bye-laws under the P.H.As. confirmed by the M. of H., which can be modified to meet any new development in construction which may arise. Sect. 4 (1) of the Act of 1935 allows the L.C.C. to make bye-laws with respect to a number of constructional matters and the Act wholly repeals some nineteen sections and the Second and Third Schedules to the Act of 1930 on bye-laws coming into operation (k). The confirmation by the Minister of bye-laws is not required, but a right of objection lies to him under sect. 8 of the Act, and the council must comply with any directions given by him. See *post*, p. 203. [385]

Administration.—The Act of 1930, although in the main administered by the L.C.C. (hereinafter referred to as "the council"), places upon the "local authority," who are defined in sect. 5 as "the Common Council of the City and the metropolitan borough council, certain definite responsibilities, and provides for the association of these authorities with the L.C.C. in the exercise of certain of the latter's discretionary powers. The matters so dealt with are set out in Statement A, *post*, p. 204. [386]

For the purpose of aiding in the execution of the Acts, the council under sect. 152 of the Act of 1930 appoints a "superintending architect of metropolitan buildings" and the approval by the council of any plans or particulars for the purposes of the Acts is signified in writing under the hand of this officer. Local supervision is secured by the appointment of district surveyors under sect. 155, who exercise independent statutory jurisdiction and take action to enforce compliance with the Act, save in those cases where action is taken by the council or the local authority.

In certain matters there is provision for appeals against decisions made by the council in exercise of their discretionary powers to a tribunal of appeal, the constitution of which is laid down in sect. 196 of the Act. Provision is also made for appeals to the same tribunal against decisions by the superintending architect and district surveyors with regard to matters in which discretion is vested in those officers. A statement of the enactments providing for appeals will be found *post*, p. 205. [387]

(f) 11 Halsbury's Statutes 1123—1219.

(g) 23 Halsbury's Statutes 213—355.

(h) 24 Halsbury's Statutes 278.

(i) 28 Halsbury's Statutes 130—148.

(k) Bye-laws under the Act of 1935 are not yet in operation.

Scope of Act of 1930.—Perhaps this is most clearly indicated by the titles of the more important Parts, which are as follows :

Parts II. and III.	..	Formation and widening of streets. Lines of building frontage.
Part IV.	..	Naming and numbering of streets.
Part V.	..	Open spaces about buildings and height of buildings.
Part VI.	..	Construction of buildings.
Part VII.	..	Special and temporary buildings and wooden structures.
Part VIII.	..	Means of escape in case of fire.
Part IX.	..	Rights of building and adjoining owners.
Parts X. and XI.	..	Dangerous and neglected structures, and dangerous and noxious businesses.
Part XII.	..	Dwelling-houses on low-lying land.
Part XIII.	..	Sky signs.
Part XIV.	..	Superintending architect and district surveyors.

The Act also contains five schedules dealing with (1) fire-resisting materials, (2) the construction of walls, (3) buildings of metal skeleton construction, (4) fees payable to the council in respect of dangerous and neglected structures, and (5) fees payable to district surveyors, but the Second and Third Schedules will be repealed on bye-laws made under the Act of 1935 coming into operation.

The more important provisions of the Act, together with the council's practice in certain circumstances, will now be dealt with. [388]

Formation and Widening of Streets (Part II.).—Before any street (l), either for carriage or foot traffic, is formed, and before any street or way is adapted for carriage traffic or any way is adapted for use as a street for foot traffic, the sanction of the council must under sect. 7 be obtained. The council must communicate every application for sanction to the local authority and it is the council's practice to obtain the authority's views before giving a decision.

The grounds upon which the council may refuse to sanction plans of (1) proposed streets, or (2) the adaptation of ways or streets, are limited and are stated in sects. 9 and 11 of the Act, and these sections require the council to state fully all their reasons for a refusal or for the imposition of conditions. [389]

Without the consent of the council, no building or structure may be erected or extended in a manner that any external wall or any part of the boundary of the forecourt is at less than the prescribed distance from the centre of the roadway of the highway on which it abuts (sect. 13). In the case of a highway for carriage traffic the prescribed distance is 20 feet and in the case of a highway for foot traffic 10 feet only (m).

After consultation with the local authority and subject to the payment of compensation under sect. 15, the council may require the width of any important street, which is being laid out or adapted to

(l) The street need not be intended for the public generally ; see *Armstrong v. L.C.C.*, [1900] 1 Q. B. 416 ; 26 Digest 274, 124, where a roadway led to a block of flats.

(m) See definition of "prescribed distance" in s. 5.

carriage traffic and is not within two miles from St. Paul's Cathedral to be increased to a width not exceeding 60 feet (sect. 12). [390]

If it is proposed to alter or re-erect a building or structure which is, or the boundary of the site of which is, within the prescribed distance and which existed on January 1, 1895, or at any time within seven years prior to that date, such alteration or re-erection may be carried out provided a plan of the building or structure and any forecourt in connection therewith is certified by the district surveyor and that no more land within the prescribed distance is occupied by the altered or re-erected building or by the forecourt (sect. 13 (5)). [391]

Lines of Building Frontage (Part III).—Under sect. 22 of the Act no building or structure (n) may, without the consent of the council, be erected or brought forward beyond the general line of buildings in any street or part of a street, place or row of houses. This prohibition only applies to land within 50 feet of the highway, and does not apply to the erection or bringing forward of any building or structure on or over land which within seven years prior to January 1, 1895, was lawfully occupied by a building or structure (o). In giving a consent to the erection of a building or structure beyond the general line of buildings, the council may attach such conditions as may be expedient in the public interest and such conditions may require, *inter alia*, the surrender of land and restrict the use to which the building or structure may be put (sect. 26).

The superintending architect can be required to define the general line of buildings (p) by a certificate which must be issued within one month from the date of the application for it, and the local authority or any person deeming himself aggrieved by the certificate may appeal to the tribunal of appeal (sects. 22, 25).

Under sect. 79 of the Act certain projections from buildings may extend beyond the general line of buildings.

Part III. of the Act does not apply within the City (sect. 31). [392]

Naming and Numbering of Streets (Part IV).—Under sect. 33, notice must be given to the council of any proposal to name a street, and they are empowered to object to an intended name. They may also by order alter the names of streets and assign numbers to houses and buildings (sects. 36, 38). In naming or renaming streets, due regard is given to local or historical associations and to the avoidance of duplicate names.

One month before making an order altering the name of a street, the council must notify their intention to the local authority and cause

(n) What is a "building or structure" is a question of fact; see *R. v. Denman*, ex parte *Palace Theatre Co., Ltd.* (1907), 71 J. P. 279; 26 Digest 504, 2107; *Pears (A. & F.), Ltd. v. L.C.C.* (1911), 75 J. P. 401; 26 Digest 504, 2108. See also *L.C.C. v. Schewzik*, [1905] 2 K. B. 605; 26 Digest 503, 2104 (advertising sign not held to be a projection); *L.C.C. v. Hancock and James*, [1907] 2 K. B. 45; 26 Digest 503, 2099 (projecting showcase held not to be a "structure"). As to the object, generally, of these provisions, see *Lilley v. L.C.C.* [1910] A. C. 1; 26 Digest 507, 2126.

(o) This does not permit the substitution of a three-storeyed building for a previous two-storeyed building in advance of the line; see *Scott v. Currit* (1900), 82 L. T. 67; 26 Digest 502, 2097.

(p) Until there is a line there can be no transgression (*Simpson v. Smith* (1871), 40 L. J. (M. C.) 89; 26 Digest 504, 2112). A corner house may be in both roads; see *Burrow v. St. Mary Abbots, Kensington, Vestry* (1886), 11 App. Cas. 257; 26 Digest 505, 2116. A boundary wall not forming part of a building cannot be taken into consideration in fixing the line; see *Motins Machine Co. v. L.C.C.*, [1902] 1 K. B. 704; Digest (Supp.).

notice of such intention to be posted at each end of the street or in some conspicuous position therein, or, at the option of the council, by circular delivered at every house in the street (sect. 37). The notice must state the day on or after which the order may be issued if no objection in writing to the proposed alteration is given to the council.

A copy of every order with regard to the numbering of houses or buildings is transmitted to the local authority, who carry the order into execution (sect. 38 (2)). [393]

The duty of exhibiting the street names devolves upon the local authority (g) who may also give notice to occupiers of houses or buildings in a street to renew the numbers as often as they are obliterated or defaced (sect. 38 (3)). Should any occupier neglect for one week after notice to mark the house or building as required by the notice, it is the duty of the authority to do the work and they may summarily recover the expenses incurred from the owner or occupier (sect. 38 (4)).

Should the local authority neglect for three months after the receipt of an order from the council to perform any or all of the necessary acts or proceedings for carrying the order into execution, the council may act in default of the local authority (sect. 40). [394]

By sect. 35 it is made an offence, (1) to set up in any street a name different from that lawfully given to the street, or (2) to place or affix any notice or advertisement within 12 inches of the name of a street painted or affixed on any house, building or erection, or by sect. 39 (3) to mark on any house or building in respect of which a numbering order has been made by the council any number which does not conform to the order.

Any person who pulls down or defaces (otherwise than in connection with the demolition or alteration of a building) any inscription of the name of a street or of a number of a house, or marks a misleading number on a house or building, must renew the inscription or remove the misleading number within one week after notice from the local authority, who may take any necessary proceedings for the recovery of a penalty in respect of any contravention of or failure to comply with these requirements (sects. 35, 39). These provisions do not extend, as regards numbering, to the City or, as regards naming of streets, to the City or the metropolitan borough of Hackney, as other similar enactments are there in force. [395]

A record is kept by the council of all names of streets and places in London and of all orders as to the names of streets and the numbers of houses, including topographical particulars and map references. This record is open to inspection by persons interested on payment of a nominal search fee, and certificates of alterations (with plans if required) are also supplied on payment of appropriate fees. An official street list is published periodically and a supplement containing alterations, additions, etc., is published annually. See also sect. 41 of the Act. [396]

Open Space about and Height of Buildings (Part V.). *Open Space.*—The Act requires open space to be provided in the rear of domestic buildings, but for this purpose the expression "domestic building" does not include any buildings used or constructed or adapted to be used wholly or principally as offices or counting-houses (sect. 42).

In order to provide light and air to habitable basements, an open

(g) For definition, see *ante*, p. 183.

space of not less than 100 square feet, free of any erection thereon above the level of the adjoining pavement, must be provided at the rear of any domestic building erected after the year 1894 which contains such a basement (sect. 43). [397]

At the rear of every domestic building abutting on a street formed after the year 1894, sect. 44 requires an open space, exclusively belonging to such building, to be provided of an aggregate extent of not less than 150 square feet, throughout the entire width of the building to a depth in every part of at least 10 feet.

Where there is a basement lighted and ventilated in the manner already described, or where there is no such basement and the ground storey is not constructed or adapted to be inhabited, the open space may be provided above the level of the ceiling of the ground storey or above a level of 16 feet measured from the pavement level.

In all other cases the open space must be free from any erection thereon above pavement level except a closet and receptacle for ashes and enclosing walls, none of which erections must exceed 9 feet in height. See also title DENSITY OF BUILDINGS at p. 840 of Vol. IV. [398]

Effect of Rear Space on Height of Building.—The extent of rear space available limits under sect. 44 (1) (v.) the height of a domestic building, this being governed by (i.) a horizontal line drawn at pavement level from a point in front of the centre of the face of the building to the boundary of the space at rear; and (ii.) a diagonal line drawn upwards towards the building at an angle of $63\frac{1}{2}$ degrees from the point where the horizontal line meets the boundary of the space at rear.

No part of the building must extend above such diagonal line except chimneys, dormers, gables, turrets or other architectural ornaments aggregating in all to not more than one-third the width of the rear elevation of the building. [399]

In the case of domestic buildings abutting (r) upon a street formed before January 1, 1895, the horizontal line may be drawn at a level of 16 feet above pavement level and the open space at rear (except in the case of working-class dwellings) provided above the level of the ceiling of the ground storey or above a level of 16 feet from the pavement (sect. 44 (2)).

Where the land at the rear of a building abuts upon a street or upon an open space secured permanently or to the satisfaction of the council, the diagonal line may be drawn from the centre of the street or the furthest boundary of the open space and the usual open space at rear need not be provided; moreover, the provisions of the Act relative to rear space do not apply to houses abutting in the rear on the River Thames, or on a public park or on a permanent open space not less than 80 feet in depth (sect. 44 (3), (5)).

Under sect. 44 (1), the council have certain discretionary powers in respect of (1) irregularly shaped sites, (2) buildings at the corner of two streets, and (3) buildings at a corner which abut on one side upon a street and on another side upon a permanent open space not less than 40 feet wide. [400]

The erection of working-class dwellings not abutting upon a street must under sect. 45 be the subject of a special sanction in each case, but the council cannot require a higher standard than that which obtains

(r) To abut, land should be on the same level; see *Great Eastern Rail. Co. v. Hackney Board of Works* (1893), 8 App. Cas. 687, H. L., at p. 696; 26 Digest 494, 2032.

with regard to buildings abutting on a street formed before January 1, 1895. An applicant may appeal to the tribunal of appeal against a decision of the council.

If it be desired to erect a domestic building (other than one for occupation by persons of the working class) upon the site of a domestic building existing on January 1, 1895, or within seven years prior to that date, sect. 46 of the Act permits its erection, provided plans (s) showing the extent of the old building in its several parts are submitted to and certified by the district surveyor. Deviations from the certified plans are subject to the approval of the council. There is a right of appeal to the tribunal of appeal against any decision of the council or the district surveyor.

A general discretionary power (subject to appeal to the tribunal of appeal) is by sect. 47 given to the council in the application of the provisions already described to the re-arrangement of a cleared area involving the formation or laying-out or widening of a street.

Sects. 48, 49 of the Act lay down rules regarding courts within buildings and the construction of windows to habitable rooms opening into courts, but these sections will be repealed on bye-laws for these purposes made under the Act of 1935 coming into operation. [401]

Height of Buildings.—Sect. 51 provides that unless the council otherwise permit, no building, other than a church or chapel, may be erected or increased to a greater height than 80 feet (exclusive of two storeys in the roof and of ornamental towers, turrets or other architectural features or decorations) but this prohibition does not apply to the rebuilding of any building to the same height as its height on August 25, 1894. Moreover, where any building which existed on that date and which forms part of a continuous block or row of buildings exceeds the height mentioned above, any other building in the same block or row belonging at that date to the same owner as the said building may be carried to the same height as the building first mentioned.

It has hitherto been the council's general policy not to relax these provisions as to height beyond permitting the two storeys above the level of 80 feet to be erected with vertical enclosures and in such a manner that such vertical enclosures are kept within the angle of roof slope laid down by sect. 67 of the Act.

There is a right of appeal to the tribunal of appeal (1) by an applicant against a refusal by the council, and (2) by the owner or lessee of any building or land within 100 yards of the site of any intended building who may deem himself aggrieved by the grant of the council's consent to the height of such building (sect. 52). [402]

The height of a building (other than a church or chapel) abutting upon a street formed after August 7, 1862, and less than 50 feet in width, must not be raised without the council's consent and no building may, without the council's consent, be erected on the side of any such street in such a manner that the height exceeds the distance from the external wall to the opposite side of the street (sect. 53 (1)). Where any such building occupies a corner plot the height is regulated by the wider street so far as it abuts upon such street and so far as it abuts upon the narrower street for a distance of 40 feet from the wider street (*ibid.*). Notwithstanding these provisions, however, any building

(s) A ground plan only is not sufficient; *Paynter v. Watson*, [1898] 2 Q. B. 31 26 Digest 510, 2146.

erected or raised before January 1, 1895, to a height to which no objection could have been taken under the law then in force may be re-erected to its existing height (sect. 53 (2)).

There are special restrictions in provisos to sect. 13 (5) as to the height of working-class dwellings if erected within the prescribed distance in the case of the city or within 20 feet of the centre of the roadway if outside the city. In either of these cases the height must not exceed the distance between the building and the opposite side of the street. See also title CONTROL OF ELEVATION at pp. 44, 45 of Vol. IV. [403]

Construction of Buildings (Part VI).—As explained *ante*, p. 183, nearly all the enactments in sects. 57 to 63 and 65 to 80 of the Act will be repealed by the Act of 1935 on corresponding bye-laws made by the L.C.C. under that Act coming into operation. The Second and Third Schedules to the Act of 1935 will also similarly be repealed. The repealed enactments deal with the construction of walls and party walls, of buildings with metal framework or of reinforced concrete, and the construction of roofs or storeys in roofs. The sections in question also prescribe detailed rules relating to the construction of chimneys and flues, furnace chimney shafts, close fires and pipes for conveying vapour, etc., floors over furnaces and ovens, and the floors of public buildings (1). The ventilation of staircases, the height of rooms and the provision of windows is also regulated. Sect. 79 deals with projections from buildings, but this section is repealed only in part. [404]

Those provisions of Part VI, which are not disturbed by the Act of 1935, provide that public buildings (1) must be constructed in such manner as may be approved by the district surveyor or, in the event of disagreement, by the tribunal of appeal and must not be used until such approval has been obtained (sect. 85). The unrepealed portion of sect. 73 requires the floors of the lobbies, corridors, passages and landings, and the flights of stairs, to be of fire-resisting materials and carried by supports of fire-resisting materials. The First Schedule to the Act contains a list of the materials which for general and special purposes are deemed to be fire-resisting, but the council may approve any other material from time to time as fire-resisting. See para. III. of the schedule.

The retained portion of para. (2) of sect. 79, and paras. (3) and (5) to (8) of that section deal with the projection over the street of cornices, shop fronts, bay windows, oriel windows or turrets, and the drainage of the roofs of projections. Open sheds not exceeding 16 feet in height and four squares (u) in area may be constructed of any such materials, and in any such manner as may be approved by the district surveyor (sect. 57 (2)). [405]

Cubical Extent.—By sect. 81 (1), subject to certain exceptions made in the section, no building of the warehouse class or used for purposes of trade or manufacture may exceed 250,000 cubic feet in extent unless divided by walls in such a manner that no division of it exceeds 250,000 cubic feet.

The council may relax the provisions in regard to cubical extent where they are satisfied on the report of the superintending architect and of the chief officer of the London Fire Brigade, that additional

(1) See definition of "public building" in s. 5.

(u) By s. 5 a "square" is defined as meaning 100 superficial feet.

cubical extent is necessary, and that arrangements will be made and maintained for lessening, as far as practicable, danger from fire. In granting such relaxations the council usually make requirements varying according to the circumstances on the following lines : (i.) that the building be constructed generally throughout of incombustible material ; (ii.) that such fire-extinguishing appliances be provided and maintained as may in the opinion of the council be necessary, and that no heating, lighting, electrical or ventilating arrangements be installed until approved by the council ; (iii.) that the height of the building shall not exceed 100 feet measured from the pavement level to the underside of the ceiling of the topmost storey ; (iv.) that fire protection of a high standard shall be provided and maintained throughout the building and that, when necessary, fire protection of a similar standard shall be provided in any adjoining building in the same curtilage or ownership ; (v.) that no cell below the street level or above the height of 80 feet shall exceed 250,000 cubic feet in extent and that the public shall not be admitted at any time to those portions of the building above the height of 80 feet ; (vi.) that if there is dwelling accommodation in a building used for trade and domestic purposes for more than twenty persons, the height of the trade portion shall not exceed 42 feet, and shall not extend more than one floor above the ground floor ; (vii.) that a division or cell on any floor formed by the vertical and horizontal separations shall not exceed 500,000 cubic feet and the floor area of such division or cell shall not exceed 40,000 square feet ; (viii.) that the building shall be not less than 40 feet from any other building unless it is entirely separated by an imperforate wall of the statutory thickness and of the full height of the higher building throughout ; (ix.) that where there are more than two storeys above the ground storey and the total extent between party walls exceeds 1,000,000 cubic feet, there shall be provided at least one unenclosed staircase constructed of brick and concrete, affording access to all floors and the roof through the outer air, without any internal communication with the building ; (x.) that in order to provide adequate means of access to a building in case of fire, a portion of the site shall abut upon a thoroughfare or thoroughfares not less than 40 feet wide, the portion to be in accordance with a prescribed scale ; (xi.) that, if considered necessary by the council, the basements shall be entirely cut off from the ground floor and upper floors of the building and all accesses thereto shall be direct from the outside of the building ; (xii.) that every floor shall be of the thickness required by the council, such thickness not being less than 5 inches of solid materials in the aggregate. [406]

Special conditions are also attached as to means of escape from fire in buildings exceeding 500,000 cubic feet which are used for trade purposes only, or partly for trade and partly for domestic purposes, by the provision of outside terraces on any part which exceeds 80 feet in height. A portion of a building used for domestic purposes or for offices must be separated by imperforate brick walls and incombustible floors from any portion used for trade or warehouse purposes, and be provided with separate access to the street. Any store for petrol must be completely separated from the main building, and any portion of it used for the manufacture or storage of varnishes or oils or moulds, models, frames, patterns or other combustible substances or articles, must be separated from, and not included in, the portion for which additional cubical extent may be allowed. [407]

Uniting of Buildings.—Without the consent of the council buildings

may not be united (a) unless they are wholly in one occupation, and when so united and considered as one building would be in conformity with the Act (sect. 82 (1)). The council frequently consent to a union and relax the general rules of the Act, as regards rendering existing wooden floors and staircases fire-resisting, if satisfactory means of escape are provided from all parts of the united buildings.

By sect. 82 (2) an opening may not be made (1) in any division wall separating divisions of a building of the warehouse class, or (2) in any party or external walls separating buildings, in any case in which such divisions or buildings (as the case may be) if taken together would exceed 250,000 cubic feet in extent, unless the opening has the floor, jambs and head constructed of incombustible material, is closed by two iron doors or shutters constructed in the manner prescribed by the section, and does not exceed the heights and widths also specified.

The council, however, have discretionary powers both as regards the construction of the doors and shutters and the size of the openings.

As to buildings exempt from Part VI., see *post*, p. 192, and sects. 220—229. [408]

Special and Temporary Buildings and Wooden Structures (Part VII.).

—The council may under sect. 89 approve the erection of iron buildings or structures to which the general provisions of the Act are inapplicable, or in the opinion of the council inappropriate, having regard to the special purpose for which the buildings and structures are designed and intended to be used. Conditions may be attached to the approval, and if the buildings or structures are of a temporary character, the council may limit the period during which such buildings or structures shall be allowed to remain (sect. 90).

It is the practice of the council to approve the erection or retention of a temporary building for trade or storage purposes only in cases in which it is shown that the reason for the adoption of temporary construction is that the building will be definitely removed within a period of five years. The periods of retention usually authorised vary from one to five years according to circumstances, regard being had to the purpose for which the building or structure is used. [409]

A consent to the erection and retention of buildings constructed wholly or mainly of wood or other combustible material is usually granted by the council only where the following conditions are complied with: (i.) that the building is enclosed and roofed with incombustible material and provided where necessary with fire-resisting lining, and that the building does not exceed one storey in height; (ii.) that the floor of the building is of solid construction, or, if a hollow floor be provided, the space under such floor is, where necessary, satisfactorily divided up into areas by solid sleeper walls carried up to the underside of the floor boards; (iii.) that ordinary fireplaces, chimneys and flues are constructed in incombustible material, in accordance with the provisions of the Act, and that any stoves, heating apparatus and flue pipes comply with its provisions; (iv.) that drainage and sanitary arrangements are approved by the local authority; (v.) that sufficient and satisfactory exits in case of fire are provided and maintained; and (vi.) that complete details of the construction of the building, showing

(a) Under the repealed Building Act of 1855, it was held that adding a new building to an old one was not "uniting"; *Scott v. Legg* (1877), 10 Q. B. D. 236; 34 Digest 589, 91. Where buildings were united under one roof originally the provisions have been held not to apply; *Goodchild v. Matthews* (1903), 67 J. P. 206; 34 Digest 589, 92.

satisfactory stability, are submitted to the council, except that where a temporary building does not exceed four squares (b) in area, its stability is left to the district surveyor. [410]

An application to the council for a renewal of the approval of a temporary building or structure for a further period must be accompanied by a certificate from the district surveyor that there has been no alteration in construction or position. Where necessary, the certificate must also testify as to stability and specify the nature of any necessary repairs.

Wooden structures, except hoardings enclosing vacant land and not exceeding in any part 12 feet in height, require to be licensed by the local authority under sect. 91 of the Act, but in the city they are dealt with by the City Corporation under the City of London (Various Powers) Act, 1911 (c).

If movable or temporary wooden structures erected by a builder for his use during the construction, alteration or repair of a building, are removed immediately upon the completion of the work a licence from the local authority is not required (d). [411]

In addition to certain buildings and structures belonging to the Crown and to various public bodies, statutory authorities, etc., the following buildings and structures are exempted by sect. 223 from Parts VI. and VII. of the Act: (i.) bridges, piers, jetties, embankment walls, etc.; (ii.) any building not exceeding 30 square feet in area and 5 feet in height and distant at least 5 feet from any other building and not having in it any stove, flue, fireplace or heating apparatus, if no portion of the building extends beyond the general line of buildings; (iii.) all buildings and structures (not exceeding 80 feet in height and 125,000 cubic feet in extent and not being public buildings) wholly in one occupation, and distant at least 8 feet from the nearest street or way and at least 30 feet from the nearest buildings and from the land of any adjoining owner; (iv.) all buildings not exceeding 250,000 cubic feet in extent (not being public buildings) and distant at least 30 feet from the nearest street or way and at least 60 feet from the nearest building and from the land of an adjoining owner; (v.) all party fence walls not exceeding 7 feet in height; (vi.) greenhouses not attached to other buildings. [412]

Means of Escape in case of Fire (Part VIII.).—The principal provisions of Part VIII. are embodied in sects. 96, 97 and 100 which may be summarised as follows:

High Buildings and Twenty-Person Buildings.—Under sects. 96 and 97, the duty is imposed upon the L.C.C. of ensuring that the following buildings shall be provided with such means of escape in case of fire as can be reasonably required in the circumstances of the case:

- (1) Any old or new high building, i.e. a building having any "upper storey," that is where the level of the upper surface of the floor is at a greater height than 50 feet above the level of the footway (if any) immediately in front of the centre of the face of the building in which such storey is situate, or, where there is no such footway, above the level of the ground before excavation (e).

(b) By s. 5 a "square" is defined as meaning 100 superficial feet.

(c) 1 & 2 Geo. 5, c. lxxxiv.

(d) See Act of 1930, proviso to s. 91 (1).

(e) See definitions of "high building" and "upper storey" in s. 5.

- (2) Any old or new building in which sleeping accommodation is provided for more than twenty persons, or which is occupied by more than twenty persons or in which more than twenty persons are employed (sect. 97 (1)), and any new building in which sleeping accommodation is provided for more than twenty persons, or which is occupied, or constructed or adapted to be occupied, by more than twenty persons or for the employment therein of more than twenty persons.

Where a building is within the first, but not within the second head, means of escape can only be required to be provided from an "upper storey." Dwelling-houses occupied as such by not more than one family (f) are exempt from the provisions of sects. 96 and 97. [413]

Means of Access to Roofs.—Under sect. 100, every old building having a shop projecting 7 feet or more from the main front of the building (see sect. 98) and every other old building, except a dwelling-house occupied as such by not more than two families, and every new building must, if it has more than two storeys above the ground storey, or if it exceeds 30 feet in height, be provided (unless and except as far as the council shall otherwise allow) with a dormer window or a door opening in a suitable position on to the roof, or a trap door in a suitable position with a fixed or hinged step ladder or other proper means of access to the roof as specified in sect. 100, and with a sufficient parapet or guard rail where reasonably practicable and necessary to prevent persons slipping off the roof. The provisions of sect. 100 do not apply to buildings falling within sect. 96 or 97 of the Act. [414]

Sect. 98, which is referred to in sect. 100, applies to buildings with projecting shops. Where persons are employed or sleep in such a building, the projecting portion of the shop is required to be provided with a roof constructed of fire-resisting materials of not less than 5 inches thick. Lantern lights or ventilating cowls in such roof are permitted subject to certain conditions set out in the section.

Sect. 99 prohibits the use of rooms over or communicating directly with any part of a building used for the storage of petroleum, etc. unless adequate safeguards to prevent the spread of fire, and ready means of escape from the room are provided.

In certain circumstances (see sect. 109) the owner of an existing or new building has a right of appeal to the tribunal of appeal against the decision of the council. [415]

Requirements of the Council.—It will be observed from the outline already given that but few specific requirements are made by the Act, the question of what constitutes reasonable means of escape being left to the discretion of the council. The reason for allowing such a wide discretion is that requirements as to means of escape must be largely governed by the dominating factors of user and occupation. The number of persons employed in or occupying a building, their distribution, the nature of the trade or manufacture carried on, have all to be taken into consideration, quite apart from questions of design and construction.

The council, in the light of experience gained over a long period of years, follow certain general principles as to means of escape. These

(f) A public house occupied by the tenant, his family, and staff is within the exception (*L.C.C. v. Cannon Brewery Co., Ltd.*, [1911] 1 K. B. 235; 34 Digest 591, 109).

necessarily deal with matters of somewhat general application, and a rigid application of the standard aimed at cannot always be insisted on. The council, therefore, though keeping as nearly as possible to the principles, find it necessary in individual cases to adopt various modifications. [416]

The minimum standard requirements in respect of means of escape in various classes of buildings may be set out as follows :

CLASS I.—BUILDINGS USED FOR TRADE PURPOSES OR OFFICES AND PROVIDED WITH ONE INTERNAL STAIRCASE

(A) In a building of an area taken at the level of the first floor, not exceeding 1,000 square feet, and not exceeding four storeys above the ground storey and in which the floors are of hollow wood construction, ceiled with plaster, compressed asbestos cement sheeting, or other suitable ceiling material, one enclosed staircase should be provided and constructed of incombustible or fire-resisting material throughout and carried to the roof, and safe access should be available from the roof to a proper waiting space on an adjoining roof or into an adjoining building. The necessary consent of all parties interested should be obtained before access into or upon adjoining premises is arranged.

The maximum distance to the staircase from any part of a floor may not exceed 50 feet.

(B) In a building constructed with fire-resisting floors, the "area" and "distance" referred to in (A) may be increased to 2,000 square feet and 60 feet respectively.

(C) In a building of this class having an "upper storey," as defined in sect. 5 of the Act, or five floors above the ground storey, a fire-resisting glazed screen with a self-closing fire-resisting door therein must be provided within the staircase enclosure so as to separate the means of access to the roof and the "upper storey," or fifth storey as the case may be, from the lower flights of the staircase. [417]

CLASS II.

In a building of the area and construction described in Class I. (A) or Class I. (B) when access to the roof and away is not available, or when the number of persons to be employed or to occupy the floors above the ground storey exceeds 150 persons, one enclosed fire-resisting staircase should be provided and arranged with the approach to the staircase in the storeys below the top storey through properly enclosed corridors or lobbies. When lobbies are provided, each lobby should be provided with a secondary self-closing fire-resisting door, and in the case of a building used for trade purposes, the lobbies should be adequately ventilated to the outer air. [418]

CLASS III.

In a building of small area when the total number of persons occupying, or to occupy, the building will exceed twenty persons, but the number on the floors above the ground storey will not exceed twenty persons, a proper means of escape to the roof and away, as described in Class I., will be accepted instead of an enclosed staircase, provided that the staircase be screened on each floor above the ground storey by a fire-resisting partition placed in the spandril of the stairs and at

the head of each flight of stairs and the doorway in each screen be provided with a self-closing fire-resisting door. [419]

CLASS IV.

In a building with fire-resisting floors and not exceeding 3,500 square feet in area, an enclosed staircase of incombustible construction should be provided and arranged with a corridor or lobby approach to it as described in Class II.

The maximum distance to the staircase in this class of building should not exceed 60 feet on any floor. [420]

Basement Escape.—In Class I. to IV. buildings in which persons are to be employed in the basement or other storeys below the ground storey, proper means of escape, independent of the enclosed staircase, should be provided from such storey or storeys direct to a street or open space. Such means of escape should be properly separated by incombustible or fire-resisting materials from the ground storey and any intermediate storey below. [421]

CLASS V.

An external staircase will be accepted instead of an internal enclosed staircase in buildings as described in the previous classes, when such staircase is suitably placed and arranged with direct access or proper protected access to a street or to an open space and proper access away from such open space is provided.

The maximum distance to the staircase in this class of building may not exceed 60 feet from any part of any floor.

The minimum width of staircases and exits therefrom in "single-staircase" buildings in which the persons accommodated are distributed over the various floors is also fixed on the basis of the number of persons accommodated. [422]

CLASS VI.—ONE-STOREY BUILDINGS

An exit should be provided direct to a street, or to an open space with proper access away from such space.

In a building in which the distance to the exit from any part of the floor exceeds 60 feet, a secondary exit or additional exits should be provided.

In garage buildings to which sect. 96 or 97 of the Act applies, or in other buildings in which highly inflammable materials or liquids are used or stored, at least two exits should be provided. [423]

CLASS VII.—BUILDINGS (TRADE OR OFFICES)—"TWO STAIRCASE" STANDARD

(A) Two staircases, which may be either enclosed or external, should be provided in suitable positions. As an alternative, one enclosed staircase and either (i.) an external staircase, or (ii.) an unenclosed staircase may be provided. When an unenclosed staircase is provided the portion of the building containing such staircase should be separated from the other portion by a wall with openings in it provided with self-closing fire-resisting doors.

An external staircase should be arranged with proper access to a street or to adjoining premises.

External gangways or balconies with proper access to adjoining premises may be provided instead of external staircases. [424]

(B) The staircases should be arranged remote from one another, but in buildings of non fire-resisting construction, the distance between the staircases should not exceed 120 feet, and in buildings of fire-resisting construction, and when the lifts, well holes or other perforations in the floors are placed so as not to prejudice the means of access between the staircases, the distance between the staircases should not exceed 180 feet. In any case the distance up to a staircase in any isolated portion should not exceed 60 feet and access should be provided from each portion of a building of this class to at least two means of escape. [425]

(C) The minimum width of staircases and exits in "two-staircase" buildings is also fixed on the basis of the number of persons accommodated. [426]

CLASS VIII.—LARGE NEW BUSINESS PREMISES USED AS DEPARTMENTAL STORES AND COMPRISING GROUND FLOOR AND FOUR STOREYS ABOVE CONSTRUCTED OF FIRE-RESISTING MATERIALS AND PROVIDED WITH A SPRINKLER INSTALLATION

(A) *Site Area not Exceeding 9,000 Square Feet.*—At least two enclosed incombustible staircases should be provided, each not less than 4 feet 6 inches in width, suitably placed adjacent to a street and with direct access to a street. [427]

(B) *Site Area Exceeding 9,000 Square Feet.*—The combined width of enclosed staircases should be not less than 9 feet as described in (A), or equal to one foot in width of stairs for every 1,000 square feet of floor area, measured at the level of the largest floor above the ground storey and exclusive of spaces occupied by staircases and lifts, whichever be the greater combined width. [428]

(C) In the case of a building which is divided into two divisions by a proper division wall, with doorway openings therein, and where such division is arranged with direct access to two enclosed staircases, the combined width of staircases as provided for in (B) may be reduced by one-quarter. [429]

(D) In the case of a building which has three or more divisions, each separated from one another by proper division walls with doorway openings therein and each division arranged with direct access to two enclosed staircases, the combined width may be reduced by one-third. [430]

(E) In buildings coming within the category of (C) or (D) above, (i.) escalators will be accepted if arranged within compartments enclosed by walls or fire-resisting partitions and arranged to deliver into an enclosed hall having direct access to a street, or (ii.) secondary staircases in internal positions may be accepted, provided such staircases be properly enclosed and arranged to deliver into enclosed halls as above described. [431]

(F) *Store Buildings Comprising Ground Storey and more than Four Storeys above.*—In buildings exceeding four storeys above the ground storey, when the level of the floor of such additional storey or storeys is 80 feet or more in height, one or more additional staircases may be required, and one or more of such staircases may be required to be arranged with imperforate enclosures below such level of 80 feet and to deliver direct to a street. [432]

CLASS IX.—RESIDENTIAL FLATS

(A) In buildings not exceeding four storeys above the ground storey, a single enclosed incombustible internal staircase will be accepted, if each flat be arranged with lobby or hall approach to the staircase, and not more than four "flats" be provided on each floor.

In buildings constructed with floors of fire-resisting materials, the number of flats per floor may be increased to six, provided that the common approach corridors be separated from the staircase by fire-resisting screens and self-closing doors. [438]

(B) In buildings exceeding four storeys above the ground storey, or having an "upper storey" or "upper storeys" as defined in sect. 5 of the Act, an alternative means of escape should be provided from such additional storey or storeys or "upper storey" as the case may be, independent of the principal internal staircase. [439]

(C) When the residential flats are above garage or other trade premises no internal communication should be provided between the dwelling and trade portions, unless, in the case of trade portions only, iron doors or other suitable protection be provided in the communicating openings. [435]

CLASS X.—HALLS AND PLACES OF ASSEMBLY

Staircases or exit doorways and corridors and passage-ways to a street or large open space should be provided as follows:

For an accommodation: (1) not exceeding 200 persons—at least two staircases or exits, each not less than 3 feet 6 inches in width, measured between doors when fully open; (2) not exceeding 300 persons—two exits, each not less than 4 feet in width; (3) not exceeding 400 persons—two exits, each not less than 4 feet 6 inches in width; (4) not exceeding 500 persons—two exits, each not less than 5 feet in width; (5) in excess of 500 persons an additional staircase or exit calculated at 3 feet 6 inches for every 150 persons or 4 feet 6 inches for 200 persons, or 5 feet in width for 250 persons.

In the case of halls and places of assembly with galleries, separate staircases and exits from the galleries should be provided on the above basis. [436]

For the purpose of ascertaining the possible occupation of the various portions of buildings, the number of persons, when not definitely stated, may be calculated at one person per (1) 10 square feet in dance halls; (2) 5 square feet in concert rooms and meeting halls provided with seating accommodation; (3) 5 square feet in "bazaar stores" or "bargain" departments of shops so far as regards the circulating gangways leading up to or provided between the sale stalls or counters; (4) 12 square feet in restaurants; (5) 50 square feet in offices, showrooms and shops; (6) 150 square feet in warehouses; and (7) 250 cubic feet, with a minimum of 25 square feet, in portions used as workrooms. [437]

Apart from the foregoing particulars relating to specific classes of buildings the council have also considered in detail the question of construction of means of escape, including the materials, fittings and dimensions of staircases, doors to staircases and exit doors, external

iron gangways and balconies, the enclosure and position of lifts, and the construction of door fasteners, guardrails, partitions, windows, etc.

The question of proper and efficient maintenance of means of escape is provided for in sect. 102 of the Act and this responsibility devolves upon the owner. [438]

Apart from those sections of the Act under which an appeal may be made to the tribunal of appeal, the county council are the authority for administering the whole of Part VIII. of the Act.

The council also deals on similar lines with means of escape from premises in London which come under sect. 14 of the Factory and Workshop Act, 1901 (*g*), and the L.C.C. (Celluloid, etc.) Act, 1915 (*h*).

It should be noted that premises to be used for public music, dancing, stage plays, or entertainments of a like kind or cinematograph exhibitions are dealt with under other Acts of Parliament and special regulations relating to such premises have been made by the council. [439]

Rights of Building and Adjoining Owners (Part IX.).—Sects. 118–127 give building owners and adjoining owners certain rights. Sect. 118 deals with these rights in relation to the line of junction of lands unbuilt on and belonging to different owners. Sect. 114 deals with the rights of the building owner in relation to party structures. Under sect. 119 the adjoining owner may require his foundations to be underpinned or strengthened when the building owner intends to erect within 10 feet of those foundations a building whose foundations extend to a lower level. In such cases, provisions apply with regard to the service of notice by the building owner stating what he proposes to do (sect. 116 (1)), and the service of a counter-notice by the adjoining owner stating what he requires to be done (sect. 115). Differences are to be settled by arbitration (sect. 117). The expenses of the works required and notified by the adjoining owner are to be borne by both parties jointly in certain cases where (as for instance where defective material is replaced by new work) the work is for the benefit of both parties; in other cases the building owner bears the expense (sect. 120). Provision is made for the apportioning of the expenses of raising a party structure where the adjoining owner makes greater use of the structure than before the alteration (sect. 120 (3)). Sects. 121–124 deal with the giving of security by the building and adjoining owners and the delivery of accounts (*i*). [440]

Dangerous and Neglected Structures (Part X.).—See title DANGEROUS BUILDINGS at pp. 288–291 of Vol IV.

Dangerous and Noxious Businesses (Part XI.).—*Dangerous Businesses.*—Under this head, sect. 143 of the Act provides that no person

(*g*) 8 Halsbury's Statutes 825. See also Vol. V., pp. 400–412.

(*h*) 18 Halsbury's Statutes 1196. See also Vol. III., pp. 172, 173.

(*i*) For a general summary of these provisions, see *Re Stone & Hastie*, [1903] 2 K. B. 403; 7 Digest 305, 273. For the difference between these provisions and the common law, see *Standard Bank of South Africa v. Stobes* (1878), 9 Ch. D. 68; 7 Digest 298, 223, and *Knight v. Purcell* (1879), 11 Ch. D. 412; 7 Digest 304, 261. See also *Selby v. Whitbread & Co.*, [1917] 1 K. B. 736; 7 Digest 307, 238 (common law rights as to easements of support superseded by statutory rights). A notice must contain full particulars so that the recipient can frame his counter-notice; *Hodds, Hart & Co. v. Grover*, [1899] 1 Ch. 11; 7 Digest 308, 294. A notice by a party who is not yet the owner is invalid; *Spiers and Son, Ltd. v. Troup* (1915), 84 L. J. (K. B.) 1986; 7 Digest 307, 239. No claim for expenses or loss of business may be entertained; *Adams v. Marylebone Borough Council*, [1907] 2 K. B. 822; 7 Digest 309, 304.

shall erect any building nearer than 50 feet to a building used for any dangerous business; provided that where a building erected before August 9, 1844, within 50 feet from any building for the time being used for any such dangerous business is pulled down, burnt, or destroyed by tempest, such building may be rebuilt.

The section also forbids any person to establish or carry on a dangerous business in any building or vault or in the open air at a less distance than 40 feet from any public way or than 50 feet from any other building or any vacant ground belonging to any person other than his landlord. By sub-sect. (3), the council may waive or relax to such extent as they think fit any of the provisions or requirements above-mentioned either unconditionally or upon and subject to such conditions as to site and construction as it may think expedient. [441]

A "dangerous business" is defined in sect. 5 of the Act as the business of the manufacture of matches or other substances liable to sudden explosion, inflammation or ignition, or of turpentine, naphtha, varnish, tar, resin or Brunswick black, or of any other manufacture dangerous on account of the liability of the substances to cause sudden fire or explosion. But sect. 143 (4) exempts premises licensed under the Petroleum (Consolidation) Act, 1928 (k), or the Explosives Act, 1875 (l), or subject to regulations for dangerous trades under sect. 79 of the Factory and Workshop Act, 1901 (m). Premises used as match factories on January 1, 1914, are also exempt, if the same conditions as to safety are continued, and premises for the manufacture of varnish, turpentine, etc. if the manufacture is carried on without direct heating by fire or flame or in such conditions as to prevent ignition. [442]

Noxious Businesses.—The provisions of sect. 144 of the Act in regard to noxious businesses are very similar to those of sect. 143 as to dangerous businesses, except that the council has no power to modify or waive them. By sect. 5 a "noxious business" means the business of a blood boiler or bone boiler or any other like business which is offensive or noxious, but does not include the business of a soap boiler, tallow melter, knacker, fellmonger, tripe boiler or slaughterer of cattle or horses. As to all these businesses, see sect. 19 of the P.H. (London) Act, 1891 (n), as amended by sect. 54 of the L.C.C. (General Powers) Act, 1930 (o), and the Transfer of Powers (London) Order, 1933 (p). [443]

Dwelling-Houses on Low-Lying Land (Part XII).—"Low-lying land" is defined in sect. 5 of the Act as being any land the surface of which is below Trinity high-water mark and which is so situated that it cannot at all times be efficiently drained by gravitation into an existing sewer of the council.

Sect. 146 forbids any person on low-lying land: (1) to erect any building for use wholly or in part as a dwelling-house or rebuild for such use any building which has been pulled down to or below the ground floor; or (2) to adapt any building for such use, except in either case with the consent of the council and subject to such regulations as the council may prescribe with reference to the erection, rebuilding or adaptation of buildings on low-lying land. Every application for a consent must be referred to the Chief Engineer of the council to give a

(k) 18 Halsbury's Statutes 1170.

(m) *Ibid.*, 557.

(o) 23 Halsbury's Statutes 360.

(p) S.R. & O., 1933, No. 114; 26 Halsbury's Statutes 613.

(l) 8 Halsbury's Statutes 385.

(n) 11 Halsbury's Statutes 1036.

certificate whether or not such consent may be granted (sect. 146 (3)).

[444]

The council's regulations require plans submitted with applications to show (i.) the positions, levels and course of the drainage system proposed to be adopted for the disposal of sewage and rain water and its connection with the sewer or sewers; and (ii.) the level above or below Ordnance Datum at which it is proposed to construct the floor of the lowest room.

An appeal to the tribunal of appeal lies under sect. 146 (4), by a person objecting to a regulation of the council under the section, or to their decision or that of the Chief Engineer. [445]

Sky Signs (Part XIII).—As to these, see. p. 144 of Vol. I.

Superintending Architect and District Surveyors (Part XIV).—*Superintending Architect.*—Under sect. 152, the council may for the purpose of aiding in the execution of the Act appoint a "Superintending Architect of Metropolitan Buildings" together with any necessary assistant staff. Provision is also made in sect. 153 for the appointment of a deputy in certain circumstances.

In practice the superintending architect, in addition to discharging certain specific duties imposed on him by the Act, is responsible for the examination and submission to the council of applications received involving the exercise of the council's discretionary powers under the Act; he also advises the council upon appropriate matters arising out of the administration of the Act and the bye-laws and regulations made thereunder. [446]

District Surveyors.—For the purposes of the Act the council has divided London into forty-four districts, each supervised by a district surveyor, and all new buildings and all additions and alterations to existing buildings and all matters relating to the width and direction of streets, general lines of buildings, and open spaces about buildings are by sect. 154 subject to his supervision. District surveyors are required to notify to the council any actual or probable contravention of the provisions of the Building Act in relation to any matter with which they are not competent to deal under sect. 164. The appointment of district surveyors and the settlement of their districts rest with the council, and they also have power to dismiss or suspend any district surveyor (sect. 155) (q).

No person is qualified to be appointed as a district surveyor unless he has received a certificate of competency as the result of examination by the Royal Institute of British Architects or has been examined in such other manner as the council may direct (sect. 156). [447]

Whenever a district surveyor is prevented by illness or other unavoidable circumstances from attending to his duties, he may under sect. 158, with the consent of the council, appoint a deputy for such period as may be necessary. The council may also in certain circumstances appoint an assistant surveyor under sect. 159.

Every district surveyor is required to have and maintain an office in such part of his district as may be approved by the council (sect. 157).

District surveyors are remunerated for duties performed by them by fees payable by builders, owners or occupiers, such fees in the majority of cases being calculated either on the cost of the work (as in

(q) As to relationship between the council and district surveyors, see *Westminster Corpn. v. Watson*, [1902] 2 K. B. 717; 34 Digest 582, 42.

the case of alterations and additions) or on the cubical extent of the building (as in the case of a new building). In the case of public buildings and buildings of steel frame or reinforced concrete construction, the scale of fees is higher. Fees are also payable in respect of services rendered to the council. Particulars of fees payable are set out in the Fifth Schedule to the Act. [448]

It may be mentioned that under sect. 178, the council have power, subject to the provisions of the Act, to pay a salary to a district surveyor and to receive the fees which would otherwise have been payable to him.

Sects. 161—171 of the Act contain provisions as to the giving of notices of proposed works, etc., to the district surveyor, and as to the enforcement by him of the Act and in regard to other matters incidental to the performance of his duties.

District surveyors are required by sect. 180 to submit to the council monthly returns of all notices and complaints received by them relative to the business of their districts, of the action taken thereon, of any special services performed by them within the previous month, and of all fees charged or received. The returns of fees are audited by the superintending architect under sect. 182. [449]

Legal Proceedings (Part XVI).—Sects. 187—190 provide for the summary prosecution of offences, etc., and the recovery of penalties, costs and expenses under the Act or under bye-laws, the persons by whom proceedings may be taken, powers of and appeal from a county court, and the application of penalties, etc.

Where any such expenses are to be borne by, or are recoverable from, the owner of premises they must in the first instance be paid by the owner entitled in possession or the occupier (up to the amount of any rent due from him), and provision is made for obtaining contributions from successive owners or other persons interested in the premises (sect. 194).

"Owner," as defined in sect. 5, includes every person in possession or receipt of rents or profits, or in occupation otherwise than as a tenant from year to year or for any less term or as a tenant at will (r).

Sects. 191 and 193 empower the council to obtain an order authorising them to demolish or alter a building where, after conviction, an offender has neglected to bring his building into conformity with the Act; the council may sell the materials to recoup the cost and recover any deficit, accounting for any balance. Sect. 192 gives similar powers to the Common Council and the metropolitan borough councils. Under sect. 194 of the Act "the owner immediately entitled in possession to the premises," or the occupier, must in the first instance pay the

(r) See *R. v. Lee* (1879), 4 Q. B. D. 75; 34 Digest 591, 117 (incumbent of a church under Church Building Acts, freeholder but not owner); *Hunt v. Harris* (1865), 19 C. B. (N. S.) 13; 38 Digest 178, 198 (occupation not essential); *Villingham v. Wood*, [1891] 1 Ch. 51; 30 Digest 471, 1348 (sub-tenant of part of house under three-year agreement, owner); *Mourilyan v. Labatmandiere* (1861), 30 L. J. (M. C.) 95; 34 Digest 588, 87 (landlord letting chapel for 21 years with tenant in possession is not an "owner"); *Orf v. Payton* (1904), 69 J. P. 103; 7 Digest 305, 275 (person entering as tenant at will while awaiting formal lease is not "owner"); *List v. Tharp*, [1897] 1 Ch. 260; 7 Digest 305, 271 (person entering under an agreement for a lease and who erects buildings is "owner"); *Watts v. Battersea Borough Council*, [1920] 2 K. B. 65; Digest (Supp.) (solicitor collecting rents). One owner cannot require other owners to be summoned to contribute; *Debenham v. Metropolitan Board of Works* (1880), 6 Q. B. D. 112; 7 Digest 306, 282.

expenses, and the phrase quoted has been held not to refer to the owner in fee simple, but to an occupier under a sub-lease (*s*). [450]

Appeals.—As already indicated, the council possess discretionary powers in certain instances; minor discretionary powers are also vested in district surveyors and the superintending architect. In certain of these cases, however, applicants have a right of appeal from the decision. The provisions under which an appeal lies are given in Statement B, *post*, on p. 205. [451]

Tribunal of Appeal.—Sects. 196—207 deal with the constitution and functions of this tribunal, which consists of three members (not being members or officers of the council) respectively appointed by the Home Secretary, the council of the Royal Institute of British Architects, and the council of the Surveyors' Institution for the purposes of the Act, except that for the purposes of sects. 58, 59 of the Act and the Third Schedule (which relate to buildings of metal construction and reinforced concrete), a member appointed by the council of the Institution of Civil Engineers is added to the tribunal. [452]

Under sect. 205, the tribunal may make regulations, subject to the approval of the Lord Chancellor, as to the procedure to be followed on appeals and as to the fees to be paid by appellants and other parties. The regulations at present in force were made in October, 1931.

For the purposes of hearing and determining appeals, the tribunal has power, subject to the regulations as to procedure, to hear parties interested either in person or by counsel, solicitor or agent "and to administer oaths and to hear and receive evidence and to require the production of any documents or books and to confirm or reverse or vary any decision and make any such order as they think fit," and the costs of any of the parties to the appeal, including the council, are in the discretion of the tribunal (sect. 204 (2)).

The tribunal may state a case for the opinion of the High Court on any question of law involved in any appeal submitted to them (sect. 203). The hearings are open to the public.

Sects. 200, 201, 207 deal with the remuneration of the members of the tribunal, and the professional and clerical assistance to be given to them. Their expenses are defrayed by the L.C.C.

The office of the tribunal is at No. 13, Great George Street, Westminster, S.W.1. [453]

Miscellaneous Provisions (Part XVII.).—This part of the Act mainly relates to administration. Some of the matters dealt with are: the council's powers to annex conditions and their validity (sect. 212); restoration of buildings of historical interest (sect. 213); power of owner, etc. to enter buildings and execute work (sect. 214); storage of wood and timber (sect. 219); prevention of obstruction in streets (sect. 221); a catalogue of offences under the Act (sect. 222); exemption of buildings, structures and works from certain parts of the Act (sects. 223, 224); the exemption from the Act of the Crown and the Inns of Court (sects. 226, 228); and rules for the conversion of buildings (sect. 234). [454]

Bye-Laws.—As indicated, *ante*, p. 183, sect. 4 of the amending Act of 1935 gives power to the council to make bye-laws with respect to matters mentioned in the section, many of which correspond to the subject-matter of sections of the Act of 1930, which will be repealed

(s) *L.C.C. v. Stilgoe*, [1932] 1 K. B. 303; Digest (Supp.).

by the Act of 1935. Matters connected with or ancillary to the specified matters may also be dealt with in the bye-laws, and they will prescribe the forms of notices and other documents and require the deposit with the district surveyor of plans of buildings or structures submitted for his certificate. [455]

Under sect. 4 (8), the council may carry out investigations and make tests for the purpose of framing a bye-law, and by sect. 5 the bye-laws may provide for the imposition of a penalty, recoverable on summary conviction, of not more than £50 and a daily penalty not exceeding £10 for a contravention of the bye-laws. Sect. 7 contemplates that a right of appeal to a court of summary jurisdiction may be conferred by a bye-law. The procedure to be adopted in making the bye-laws is governed by sect. 8 which requires notice to be given by the council two months before the making of bye-laws. This notice is to be by advertisement in the *London Gazette*, a suitable technical journal and a daily newspaper, and copies of every proposed bye-law must be sent to the Common Council of the City and to each metropolitan borough council, and also various bodies specified in the section. Copies of proposed bye-laws are also to be deposited at County Hall for public inspection at all reasonable hours without payment. Any objection to the proposed bye-laws must be made within six weeks after the publication of the advertisement by letter addressed to the Minister of Health. The Minister must forward to the council a copy of every valid objection not being a frivolous or vexatious objection. If after consultation between the council and the objectors, all objections are withdrawn, or if no valid objection has been received, the council may proceed to make the bye-laws, either in their original form or as altered to meet an objection. If, however, a valid objection is not withdrawn, the bye-law in question will be considered by the Minister, who will decide whether the bye-law should or should not be made by the council in the proposed form or in what way it should be amended. After the decision of the Minister has been given, it will not be lawful for the council to make the bye-law otherwise than in accordance with his decision. [456]

By sect. 9, power is given to the council, on the receipt of an application, to modify or waive any of the requirements of the bye-laws on such terms and conditions as they think fit, but before coming to a decision the council must, if it appears that the rights or interests of the owner of any adjoining property will be affected, give notice of the application to that owner. A register of all decisions under sect. 9 must be kept at County Hall, and is open for public inspection without payment. On any bye-law relating to metal skeleton or reinforced concrete construction, but not to the stability of a building or structure, an appeal lies to the tribunal of appeal against the decision of the council.

The Act of 1935 is to be construed as one with the Act of 1930, and in the schedule are specified certain sections of the Act of 1930, which will be repealed on the coming into operation of bye-laws replacing them. Those bye-laws must specify the enactment or regulation which they replace. Moreover by sect. 4 (5), where a right of appeal against any requirement or action taken in pursuance of the Act of 1930 is conferred by that Act, a like right of appeal must be reserved in respect of any bye-law relating to the same subject-matter. Presumably it is intended that a corresponding right of appeal should be given by the bye-law. A list of matters as to which an appeal lies under the Act of 1930 will be found *post*, on p. 205.

SECTs. 184, 185 of the Act of 1930, as to bye-laws, are repealed by sect. 12 of the Act of 1935, and the saving for the city in sect. 186 is also repealed but here only as from the date on which certain bye-laws come into operation. [457]

STATEMENT A.—PROVISIONS OF THE ACT OF 1930, IMPOSING RESPONSIBILITIES ON THE COMMON COUNCIL OF THE CITY OR THE METROPOLITAN BOROUGH COUNCIL, OR REQUIRING THE ASSOCIATION OF THESE AUTHORITIES WITH THE COUNTY COUNCIL.

Section of Act.	Powers, Duties, etc.	Authorities concerned.
25, 31	<i>General Line of Buildings.</i> —Appeal to Tribunal of Appeal against certificate of Superintending Architect defining general line of buildings.	Metropolitan Borough Councils.
20, 31	<i>Street in which a building is situate.</i> —Power to require (as can other interested persons) Superintending Architect to determine in what street or streets a building or structure is situate with right of appeal to Tribunal of Appeal.	Metropolitan Borough Councils.
34, 35	<i>Street naming.</i> —(1) Placing of names at ends of streets and enforcing renewal of street names; (2) obtaining removal of advertisements, etc., if placed within twelve inches of a street name.	(1) Common Council and Metropolitan Borough Councils. (2) Metropolitan Borough Councils (except Hackney Borough Council*).
35 (2), 39	<i>House numbering.</i> —When the L.C.C. order the numbering of houses in a street, the local authority carry the order into effect. Proceedings in respect of removing or defacing a number or marking a misleading number may be taken by a local authority.	Common Council and Metropolitan Borough Councils.
91	<i>Wooden structures</i> require the licence of the local authority who may take proceedings if necessary.	Metropolitan Borough Councils.
150	<i>Sky signs.</i> —Removal is enforceable by local authorities.	Common Council and Metropolitan Borough Councils.
192	<i>Buildings, etc., erected in advance of the General Line of Buildings.</i>	Metropolitan Borough Councils and the L.C.C.
219 (5)	<i>Storing of timber, etc.</i> —Local authority may take proceedings to enforce compliance with rules relating to storing of timber, firewood, barrels, etc.	Metropolitan Borough Councils.
221	<i>Obstructions to Streets.</i> —Local authority may remove any post, rail, fence or other obstruction to a street.	Metropolitan Borough Councils.

* Other similar enactments are in force in the metropolitan borough of Hackney.

With regard to the following matters, the Act provides for collaboration between the L.C.C., the Common Council and the metropolitan borough councils: (1) formation of new streets (sect. 7 (2)); (2) adaptation of ways as streets (sect. 10 (1)); (3) requiring a greater width than 40 feet for a proposed new street or the adaptation of a street or way for carriage traffic (sect. 12); (4) building within prescribed distance from the centre of a roadway (sect. 13 (4)); (5) requiring the prescribed distance in a street to be greater than 20 feet (sect. 13 (2)); and (6) permission to erect certain bay windows, oriels or turrets and other

projections from buildings where such projections extend beyond the general line of buildings (sect. 79 (5), (6) and (8)).

Notice has also to be given by the council to the Common Council and the metropolitan borough councils: (1) before the council alter the name of a street (sect. 37); and (2) two months before the making of any bye-law under the Act of 1935 (sect. 8 of that Act). [458]

STATEMENT B.—PROVISIONS OF THE ACT OF 1930, UNDER WHICH APPEALS MAY BE MADE.

N.B.—The appeal lies to the Tribunal of Appeal unless otherwise stated.

Section of Act.	Subject.	Against decision of.
5	Level of ground (see definition).	District Surveyor.
6—12, 19	Formation and adaptation of streets.	L.C.C.
13 (3), (4)	Position of buildings and forecourt boundaries with reference to highways.	Do.
13 (5), 19	Refusal to certify plans.	District Surveyor.
25	Definition of general line of buildings.	Superintending Architect.
29	Determination of streets in which buildings are situated.	Do.
44 (1) (vi.), (3)	Space at rear of buildings.	L.C.C.
45	Open spaces about buildings.	Do.
46	Domestic buildings on old sites.	Do.
47	Refusal to certify plans.	District Surveyor.
50	Laying out of streets on cleared areas.	L.C.C.
52	Certificate as to front or rear of a building.	Superintending Architect.
58 (3)*	Allowance or refusal to allow greater height for building.	L.C.C.
58 (6)*	Modification or waiver of certain requirements of Third Schedule (Metal skeleton construction).	Do.
58 (9)*	Requirements of district surveyor (<i>Petty Sessional Court</i>).	District Surveyor.
59 (9)*	Modification or waiver of requirements of reinforced concrete regulations.	L.C.C.
70 (6)	Construction of oriel windows (<i>Superintending Architect</i>).	District Surveyor.
85	Construction of public buildings.	Do.
86	Conversion into public buildings.	Do.
96 (4)	Means of escape—new buildings.	L.C.C.
97 (2)	Means of escape—old buildings.	Do.
98 (3)	Means of escape—projecting shops.	Do.
99, 109	Means of escape—rooms over or communicating with other parts of buildings used for storage of petroleum, etc.	Do.
100 (2)	Means of escape—to roofs.	Do.
101	Means of escape—conversion of buildings.	Do.
Part IX.	Rights of building and adjoining owners (<i>County Court or High Court</i>).	Private Surveyors.
146 (4)	Dwelling-houses on low-lying land.	L.C.C. or Chief Engineer.
155	Compensation to district surveyor.	L.C.C.
168	Notices of objection (<i>Petty Sessional Court</i>).	District Surveyor.
180	Appeals from County Court decisions (<i>Court of Appeal</i> —see sect. 105 of County Courts Act, 1934).	County Court.

[459]

* These provisions are repealed by the Act of 1935, upon corresponding bye-laws coming into operation, but by s. 4 (5) of that Act, the right of appeal must be reserved by bye-law.

LONDON COUNTY COUNCIL

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See also titles :

BORROWING ;
CITY OF LONDON ;
HOSPITAL SERVICES (LONDON) ;
LONDON ;
LONDON BUILDING ;

LONDON FIRE BRIGADE ;
LONDON, RATING IN ;
LONDON ROADS AND TRAFFIC ;
PUBLIC ASSISTANCE IN LONDON.

Constitution.—The L.C.C. comprises 144 members, of whom 124 are councillors and 20 are aldermen (*a*). The councillors are elected for three years (*b*) in 61 county electoral divisions, which correspond with the 61 parliamentary constituencies in the County. Four councillors are elected in the City of London division, which corresponds with the City of London, and two in each of the other 60 divisions. They are elected by the local government electors (see titles ELECTIONS and LOCAL GOVERNMENT ELECTORS). The aldermen are elected for six years by the councillors from councillors or from persons qualified to be councillors, one-half retiring every three years (*c*). The chairman is chosen by the whole body of aldermen and councillors for one year, from the aldermen and councillors or from persons qualified to be councillors. A vice-chairman and a deputy chairman are also appointed (*d*).

(*a*) L.G.A., 1888, s. 40 (4), (5) ; 10 Halsbury's Statutes 719 ; as amended by para. 5 of Sched. VI. to Representation of the People Act, 1918 ; 7 Halsbury's Statutes 588.

(*b*) L.G.A., 1888, s. 2 (2) ; 10 Halsbury's Statutes 687.

(*c*) Municipal Corpn. Act, 1882, s. 14 ; 10 Halsbury's Statutes 581 ; L.G.A., 1888, s. 75 ; 10 Halsbury's Statutes 746. See also title ALDERMAN.

(*d*) As to the chairman, vice-chairman and deputy chairman, see Vol. III., pp. 49, 50.

The simplification of the law governing the constitution, election and proceedings of county councils made by the L.G.A., 1933, does not extend to London, and for the existing law in London reference must be made to a large number of Acts. But the enactments relating to public health in London have recently been consolidated by the P.H. (London) Act, 1936, and it is expected that a Bill on the lines of the L.G.A., 1933, will be put in hand by the county council. [460]

Qualification.—A person may be a councillor if he :

- (1) is a local government elector (e) ; or
- (2) is the owner of property in the county held by freehold, leasehold or any other tenure (f) ; or
- (3) has resided within the county during the twelve months preceeding the election (g).

Reference has already been made to the qualification for the office of alderman or chairman.

Disqualification.—A person is disqualified for being elected or being a councillor or alderman, if he :

- (1) is adjudged bankrupt (h) ;
- (2) holds an office or place of profit, other than the office of chairman or deputy chairman, in the gift or disposal of the council (i) ;
- (3) has directly or indirectly, by himself or his partner, any share or interest in any contract with, by, or on behalf of the council (i).

This disqualification does not arise where the interest refers to sales and leases of land, loans, advertisements in newspapers and holdings in certain companies, nor does it refer to medical practitioners receiving fees (k). See also sect. 144 of the Poor Law Act, 1930 (l) (penalty for furnishing goods, etc., for relief of poor), and sect. 174 of the Lunacy Act, 1890 (m), as applied by sect. 86 of the L.C.C. (General Powers) Act, 1915 (n) (members of Mental Hospitals Committee not to be interested in contracts, and penalties). Members receiving fees as representatives of other local authorities are not disqualified if they pay over to the council the fees less subsistence and travelling expenses (o). Renting a house from the council, or accepting an advance under the Small Dwellings Acquisition Acts are not disqualifications (p) ;

(e) Municipal Corpn. Act, 1882, s. 11 ; 10 Halsbury's Statutes 579 ; L.G.A., 1888, s. 75 ; 10 Halsbury's Statutes 746 ; Representation of the People Act, 1918, Sched. VI., para. 2 ; 7 Halsbury's Statutes 588.

(f) Representation of the People Act, 1918, s. 10 ; 7 Halsbury's Statutes 555.

(g) County and Borough Councils (Qualification) Act, 1914, s. 1 ; 10 Halsbury's Statutes 852.

(h) Bankruptcy Acts, 1883, ss. 32, 34, 1890, s. 0 ; 1 Halsbury's Statutes 581, 583, 586. See also Municipal Corpn. Act, 1882, s. 39 ; 10 Halsbury's Statutes 590, as applied by L.G.A., 1888, s. 75 ; 10 Halsbury's Statutes 746.

(i) Municipal Corpn. Act, 1882, s. 12 ; 10 Halsbury's Statutes 580, as applied by L.G.A., 1888, s. 75 ; 10 Halsbury's Statutes 746.

(k) P.H. (London) Act, 1936, ss. 133 (7), 192 (10).

(l) 12 Halsbury's Statutes 1039.

(m) 11 Halsbury's Statutes 78.

(n) *Ibid.*, 1330.

(o) L.C.C. (General Powers) Act, 1926, s. 43 ; 11 Halsbury's Statutes 1384.

(p) Housing Acts, 1923, s. 22 ; 1936, s. 185 ; 13 Halsbury's Statutes 989.

- (4) is a coroner (*q*), a poor law officer (*r*), or a teacher in a non-provided school (*s*);
- (5) has received poor relief during the previous twelve months; but medical relief or relief as a blind person does not disqualify (*t*), nor does maintenance as a rate-aided mental patient (*u*);
- (6) has been surcharged by the district auditor with an amount exceeding £500 (*a*);
- (7) has been found guilty of corrupt or illegal practices (*b*), or convicted under the Public Bodies Corrupt Practices Act, 1889 (*c*), or convicted of treason or felony and sentenced to imprisonment with hard labour or exceeding twelve months (Forfeiture Act, 1870 (*d*)).

Disqualification for membership of committees is similar to that for membership of the council (*e*), but lack of qualification for office of councillor does not disqualify a co-opted member of a committee or sub-committee (*e*). Special provisions apply to members of the mental hospitals committee and the education committee (*f*).

Proceedings may be instituted against persons acting in office when they are disqualified (*g*).

Failure to attend meetings for six months involves loss of office (*h*).

Members may be re-elected if qualified or not disqualified (*i*).

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Resignation.—May be effected by notice in writing (*k*). [462]

Prohibition from Voting.—Members may not vote on matters in which they have a pecuniary interest (*l*).

Similar disabilities are applied to members of committees and sub-committees (*m*).

Members representing the City of London may not vote on matters involving expenditure to which the City does not contribute (*n*), but

(*g*) Coroners (Amendment) Act, 1926, s. 1 (3); 3 Halsbury's Statutes 780.

(*r*) Poor Law Act, 1927, s. 8; 12 Halsbury's Statutes 958.

(*s*) Education Act, 1921, Sched. I., Part III., para. 2; 7 Halsbury's Statutes 218.

(*t*) L.G.A., 1929, s. 10 (1); 10 Halsbury's Statutes 890.

(*u*) Mental Treatment Act, 1930, s. 18 (1); 23 Halsbury's Statutes 170.

(*a*) Audit (Local Authorities) Act, 1927, s. 1 (1); 10 Halsbury's Statutes 879.

(*b*) For the meaning of this phrase, see Municipal Elections (Corrupt and Illegal Practices) Act, 1884; 7 Halsbury's Statutes 511, applied by L.G.A., 1888, s. 75; 10 Halsbury's Statutes 746. The Act of 1884 provides for "corrupt practice" by reference to other Acts (see s. 2 of Part I. of the Third Schedule to that Act).

(*c*) 4 Halsbury's Statutes 718.

(*d*) *Ibid.*, 648.

(*e*) L.C.C. (General Powers) Act, 1934, s. 25; 27 Halsbury's Statutes 415.

(*f*) *Ibid.*, s. 22 (3); *ibid.*, 413; and Education Act, 1921, Sched. I., Part III.; 7 Halsbury's Statutes 218.

(*g*) L.C.C. (General Powers) Act, 1934, ss. 25, 36; 27 Halsbury's Statutes 415, 421. These provisions follow s. 84 of the L.G.A., 1933; 26 Halsbury's Statutes 351.

(*h*) L.C.C. (General Powers) Act, 1934, s. 35; 27 Halsbury's Statutes 420.

(*i*) *Ibid.*, s. 38.

(*k*) *Ibid.*, s. 32.

(*l*) Municipal Corpn. Act, 1882, s. 22 (3); 10 Halsbury's Statutes 584; L.G.A., 1888, s. 75; 10 Halsbury's Statutes 746; Housing Act, 1930, s. 185; and Lunacy Act, 1890, s. 174 (2); 11 Halsbury's Statutes 78, the last-mentioned enactment being applied by the L.C.C. (General Powers) Act, 1915, s. 30; 11 Halsbury's Statutes 1380.

(*m*) L.C.C. (General Powers) Act, 1934, s. 26; 27 Halsbury's Statutes 416.

(*n*) L.G.A., 1888, s. 41 (6); 10 Halsbury's Statutes 721.

this does not prevent a City member from occupying the chair at a meeting, though he may not vote (a). [463]

Proceedings.—The meetings and proceedings of the L.C.C. are regulated by sect. 75 of the L.G.A., 1888 (p), applying with modifications certain provisions of the Municipal Corporations Act, 1882, as amended by the L.C.C. (General Powers) Acts, 1893, s. 10 (g), and 1934, Part IV (r). Standing orders regulating the procedure at meetings have been made under the last-mentioned Act.

The quorum is one-fourth of the whole number of members (s).
As to minutes, see title MINUTES. [464]

Area of Jurisdiction.—The administrative County of London, the area of jurisdiction of the L.C.C. for most purposes, includes the City of London and was formed by sect. 40 (1), (2) of L.G.A., 1888 (t). It may be said to have had its origin in 1855, when the Metropolitan Management Act, 1855 (u), established the metropolitan vestries and district boards as primary local authorities and the Metropolitan Board of Works as the central local authority. No change was made in this area between 1855 and 1888, when the L.G.A., 1888, set up the L.C.C. in place of the Metropolitan Board of Works to act as the central local governing authority for the same area, the vestries and district boards being left to function as before. Between the Act of 1888 and the London Government Act, 1899 (a), which substituted metropolitan borough councils for the vestries and district boards and effected some rearrangement of areas of jurisdiction and an adjustment of powers, the area of the county was unchanged. By the Act of 1899 three relatively large alterations were made; the parish of Penge and the area known as Clerkenwell Detached were removed from the County and the area known as South Hornsey was added to the County. Finally in 1903 and 1907 respectively small adjustments of boundary were made (i) in the neighbourhood of Mitcham and Wandsworth, (ii) in the neighbourhood of Hackney and Tottenham, under orders of the Local Government Board confirmed by Parliament. In the last twenty-eight years there has been no change in the external boundaries of the county, and little change in the last eighty years. The area of jurisdiction was just under 118 square miles from 1855 to 1900, and has been just under 117 square miles since. [465]

Functions of the Council.—The powers and duties of the L.C.C. can be classified in five groups according to the source whence they were derived. One group consists of powers and duties transferred from the Metropolitan Board of Works by sect. 40 (8) of the L.G.A., 1888 (b), viz. main drainage, important street improvements, fire

(a) L.C. (General Powers) Act, 1890, s. 23; 11 Halsbury's Statutes 1021.

(p) 10 Halsbury's Statutes 746.

(g) 11 Halsbury's Statutes 1114.

(r) 27 Halsbury's Statutes 411.

(s) L.G.A., 1888, s. 75 (15); 10 Halsbury's Statutes 747, and L.C.C. (General Powers) Act, 1893, Sched., para. 8; 11 Halsbury's Statutes 1118.

(t) 10 Halsbury's Statutes 718. As to the distinction between "the administrative county" and "the county" of London, see title LONDON.

(u) 11 Halsbury's Statutes 889—958.

(a) *Ibid.*, 1225—1243.

(b) 10 Halsbury's Statutes 719.

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brigade, housing of the working classes, supervision of the laying out of streets and the construction of buildings, and the provision and maintenance of parks. A second group consists of administrative business transferred from the justices by sects. 3 and 7 of the same Act (c) viz. the licensing of premises for stage-plays, music and dancing, the provision of mental hospitals and reformatory and industrial schools, duties with regard to county bridges, the appointment, etc., of coroners, and the administration of statutory provisions relating to weights and measures. A third group consists of powers and duties mainly transferred from the London School Board by the Education (London) Act, 1903 (d), coupled with additional powers relating to education conferred before or after that Act. A fourth group consists of the powers and duties transferred from the London poor law authorities by sect. 18 of the L.G.A., 1929 (e). This transfer enlarged the scope of some previously existing services, e.g. the public health, mental hospitals, education and ambulance services, and made the council responsible for the consideration of applications for relief and for the provision of all forms of institutional and domiciliary assistance, including the provision of hospitals and of treatment for the sick. It also made the council the central hospital authority for London for infectious diseases. The fifth and last group includes functions directly conferred by Parliament with regard to a number of matters the chief of which, apart from the strengthening or extension of powers already conferred, relate to child protection, registration of nursing homes, supervision of midwives, licences for cinematograph halls, employment agencies, massage establishments, motor cars and motor driving, the provision of ambulances, the maintenance of museums, small holdings and allotments, the welfare of the blind, the care of the mentally defective, shop hours, town planning and health services. [466]

The above classification of the powers and duties of the L.C.C. according to the sources whence, and the sequence in which, they have been derived, would be essential if one were setting forth the history of the Council and the evolution of their functions, but does not afford a complete description of their powers as they exist to-day. The Council possessed educational powers before the transfer of the powers of the London School Board, just as health and hospital functions were performed by them before the functions of the guardians and the Metropolitan Asylums Board were transferred.

The undermentioned list of subjects in respect of which the Council exercise functions provides a conspectus of the present position divorced from historical considerations. The classification of subjects in the list is one of convenience and has no statutory or constitutional significance. The list is derived from the Council's annual report where the items are treated in greater detail. For further information on each subject reference should be made to the appropriate titles throughout this work. [467]

General Functions.—Bills.—Promoting and opposing Bills and legal proceedings in the interests of the inhabitants (f).

(c) 10 Halsbury's Statutes 688, 691.

(d) Almost entirely repealed by the Education Act, 1921.

(e) 10 Halsbury's Statutes 804.

(f) Metropolis Management Act, 1855, s. 144; 11 Halsbury's Statutes 920; Metropolis Management Amendment Act, 1856, s. 10; 11 Halsbury's Statutes

Boundaries.—(i.) Making representations with respect to alterations of the County boundary; consequent financial adjustments (*g*).

(ii.) Altering or defining parish boundaries, or uniting parishes; consequential adjustments; custody of maps (*h*).

(iii.) Placing streets in more than one metropolitan borough under exclusive management of one borough council for paving, etc. (*i*).

County of London Shrievalty.—Filing declarations (*k*).

Elections.—Fixing dates for triennial election of county councillors; appointment of county returning officer; costs of elections; regulating inspection of documents; polling districts; scales of expenses; removing difficulties at elections and dispensing with prohibition of voting by members of metropolitan borough councils in certain cases (*l*).
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Judicial Matters. Central Criminal Court.—Payment of portion of salaries and expenses (*m*).

Coroners.—Appointment, payment and pensions; division of county (*n*).

Coroners' Courts.—Providing and maintaining accommodation for inquests (*o*).

Criminal Prosecutions.—Costs (*p*).

Justices Advisory Committee.—Expenses (*q*).

Juvenile Offenders.—Provision of accommodation; power to contribute to cost of sending young offenders to hostels (*r*).

900; L.G.A., 1888, s. 15; 10 Halsbury's Statutes 698; Borough Funds Acts, 1872 and 1903; 10 Halsbury's Statutes 559, 836; County Councils (Bills in Parliament) Act, 1903; 10 Halsbury's Statutes 835; Railway and Canal Traffic Acts, 1888 to 1894; 14 Halsbury's Statutes 220, 250, 251.

(*g*) L.G.A., 1888, ss. 54, 59 and 62; 10 Halsbury's Statutes 730, 734, 736.

(*h*) L.G.A., 1888, ss. 57 and 59; 1894, s. 30; and 1920, s. 48; 10 Halsbury's Statutes 732, 734, 800, 918. Orders in Council under the London Government Act, 1890, and Orders of Local Government Board and Minister of Health.

(*i*) Metropolitan Management Acts, 1855, s. 140; and 1862, s. 86; 11 Halsbury's Statutes 920, 988.

(*h*) L.G.A., 1888, ss. 40 (2), 83 (11) (a); 10 Halsbury's Statutes 718, 754.

(*l*) County Councils (Elections) Act, 1891, and County Councils (Elections) Amendment Act, 1900; 7 Halsbury's Statutes 541, 545; L.G.A., 1888, s. 75 (2), (17), (18) and (20); 10 Halsbury's Statutes 746, 748; Ballot Act, 1872, Sched. I., Part II.; Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 21 (10); 7 Halsbury's Statutes 448, 520; Municipal Corporations Act, 1882, ss. 34 and 36; Polling Districts (County Councils) Act, 1908; 10 Halsbury's Statutes 580, 843; Representation of the People Acts, 1918—1928; 7 Halsbury's Statutes, title "Elections"; L.G.A., 1894, ss. 46 (2) (c), and 48 (5) and (7); 10 Halsbury's Statutes 805, 808; L.G. (Elections) Act, 1896; 7 Halsbury's Statutes 545; London Government Act, 1890, s. 2 (5), and Representation of the People Act, 1918, s. 35; 11 Halsbury's Statutes 1226; 7 Halsbury's Statutes 568; Metropolitan Borough Councils Election Order, 1931; Local Elections (Alterations of Rules) Order, 1925; Representation of the People Act, 1918, ss. 25 (2) and 31 (1); 7 Halsbury's Statutes 563, 566.

(*m*) L.G.A., 1888, ss. 41 (5), 89 and 100; 10 Halsbury's Statutes 721, 757, 760; Central Criminal Court Act, 1834, s. 20; 4 Halsbury's Statutes 37.

(*n*) L.G.A., 1888, ss. 3 (xi.) and 5; 10 Halsbury's Statutes 689, 690; Coroners Acts, 1844 to 1926; 3 Halsbury's Statutes 758.

(*o*) P.H. (London) Act, 1936, s. 238.

(*p*) L.G.A., 1888, ss. 41 (5), 67, 89 and 100; 10 Halsbury's Statutes 721, 740, 757, 760; Criminal Appeal Act, 1907; Prosecution of Offences Act, 1908; Costs in Criminal Cases Act, 1908; 4 Halsbury's Statutes 725, 738, 789.

(*q*) L.C.C. (General Powers) Act, 1926, s. 35; 11 Halsbury's Statutes 1361.

(*r*) Children and Young Persons Act, 1933, Part IV.; 26 Halsbury's Statutes 216; Criminal Justice Act, 1925, Part I.; 11 Halsbury's Statutes 395.

Licensing Appeals.—Costs (*s*).

Poor Prisoners' Defence.—Costs (*t*).

Probation Officers.—Approval of certain salaries (*u*).

Quarter Sessions.—Power to petition to appoint chairman or deputy chairman. Submission to Home Secretary of schemes; salaries and pensions of chairman and deputy chairman and clerks; salary of clerk of the peace; costs; accommodation for keeping of records (*a*).

Standing Joint Committee.—Appointment of one-half the membership; power to confer superannuation and other benefits upon the clerk of the peace, the deputy clerk of the peace and officers (*b*).
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Finance.—See also titles BORROWING; FINANCE; FINANCE COMMITTEE.

Borrowing for Capital Purposes.—Issue of stock, terminable annuities, or bills, or by mortgage (*c*). Issue of bearer bonds (*d*).

Borrowing, Temporary.—Power to borrow for not exceeding six months as H.M. Treasury may approve (*e*).

Borrowing for Current Expenses.—Power to borrow subject to consent of Minister of Health (*f*).

Compensation to Transferred Officers.—Duty to award and pay (*g*).

Epidemic Regulations.—Expenses of sanitary authorities (*h*).

Plots, Refund of Rates.—Power to refund in respect of increased rateable value of houses converted (*i*).

Housing Grants.—Power to contribute to expenses of metropolitan borough councils (*k*).

(*s*) L.G.A., 1888, s. 66; 10 Halsbury's Statutes 740; Licensing (Consolidation) Act, 1910, s. 32 (1); 9 Halsbury's Statutes 1007.

(*t*) Poor Prisoners' Defence Act, 1930, s. 3; 23 Halsbury's Statutes 26.

(*u*) Criminal Justice Act, 1925, Part I.; 11 Halsbury's Statutes 305; The Probation Rules, 1926; The Probation Officers' Superannuation Rules, 1926.

(*c*) L.G.A., 1888, ss. 41 (5), 42, 44 and 66; 10 Halsbury's Statutes 721, 722, 788, 740; Quarter Sessions (London) Act, 1890; 11 Halsbury's Statutes 358; L.C.C. (General Powers) Act, 1931, s. 47; 24 Halsbury's Statutes 277.

(*d*) L.G.A., 1888, ss. 30, 41 (5), 64 (3), 66, 83 (2), (4) and (5), 84 (2), 118 (8) and (10); 10 Halsbury's Statutes 708, 721, 788, 740, 753, 754, 755, 765, 766; Criminal Justice Administration Acts, 1851 and 1914; 4 Halsbury's Statutes 523; 11 Halsbury's Statutes 371; Local Stamp Act, 1869; Justices Clerks Act, 1877; 11 Halsbury's Statutes 316, 310; L.C.C. (General Powers) Act, 1930, ss. 27—34; 23 Halsbury's Statutes 357.

(*e*) L.C.C. (Finance Consolidation) Act, 1912 (2 & 3 Geo. 5, c. cv.); L.C.C. (Money) Acts, 1912, s. 6 (2 & 3 Geo. 5, c. cxli.); 1914, s. 6 (4 & 5 Geo. 5, c. cxlii.); 1920, s. 6 (10 & 11 Geo. 5, c. cxlvii.); 1921, s. 6 (11 & 12 Geo. 5, c. lxxvii.); 1925, s. 6 (15 & 16 Geo. 5, c. lxxv.); 1928, s. 7 (18 & 19 Geo. 5, c. xxvii.); 1929, s. 7 (19 & 20 Geo. 5, c. lli.); and other Annual Money Acts; Local Authorities (Financial Provisions) Act, 1921, s. 4; 11 Halsbury's Statutes 1345; Housing Act, 1930, ss. 118, 119, 121, 122; L.G.A., 1929, c. 128 (3); 10 Halsbury's Statutes 968.

(*d*) Public Authorities and Bodies (Loans) Act, 1916, as amended by the Housing (Additional Powers) Act, 1919; printed as amended 10 Halsbury's Statutes 358; Housing Act, 1936, ss. 122, 124; L.C.C. (Money) Acts, 1920, s. 8; 1928, s. 7; 1930, s. 7.

(*f*) L.C.C. (Finance Consolidation) Act, 1912, s. 3 (2 & 3 Geo. 5, c. cv.).

(*g*) Local Authorities (Financial Provisions) Act, 1921, s. 3, as amended by the Local Authorities (Emergency Provisions) Acts, 1923 to 1928; 11 Halsbury's Statutes 1344 *et seq.*

(*h*) L.G.A., 1929, s. 123; 10 Halsbury's Statutes 962.

(*i*) P.H. (London) Act, 1936, s. 218.

(*j*) Housing Act, 1936, ss. 93, 193.

(*k*) *Ibid.*, 1936, s. 35.

Loans, Advance of.—Power to lend money to certain bodies (l). Advances, etc., for the purpose of increasing housing (m).

Loans Guarantee.—Power to guarantee loans by building societies, etc., in excess of normal (n).

Loans, Sanction to.—Sanctioning borrowing by metropolitan borough councils (o).

Loans, Temporary.—Power to lend temporarily (p).

Maternity and Child Welfare, Welfare of the Blind, Supervision of Defectives.—Payments to voluntary associations (q).

Public Vaccinators, Medical Officers of Health and Sanitary Inspectors.—Payments towards salaries (r).

Rating Appeals.—Receipt of fees and payment of expenses (s).

Recovery of Expenses of Hospital Treatment, etc.—Duty to recover whole or part (t).

School Children Resident in Institutions.—Duty to contribute to expenses of education (u). [470]

Rating and Local Taxation.—See also title LONDON, RATING IN.

County Rate.—Making and assessing and levying precepts (a).

Local Stamps.—Power to order fees, fines, etc., to be received by means of stamps (b).

Local Taxation and Road Fund Licences.—Collection (c).

Precepts, Enforcement of.—Warrant or distress, or appointment of receiver (d).

Valuation Lists.—Receiving certified copies; publishing totals of gross, rateable and assessable values; appealing against totals of valuation lists (e). [471]

(l) L.C.C. (Finance Consolidation) Act, 1912 (2 & 3 Geo. 5, c. cv.); Metropolitan Police Act, 1880, s. 3; 12 Halsbury's Statutes 839; Housing Act, 1936, ss. 90, 91, 124, 125; L.C.C. (Money) Act, 1920, s. 6.

(m) Housing Act, 1936, ss. 90, 91, 124, 125; Small Dwellings Acquisition Acts, 1899 to 1923; 13 Halsbury's Statutes 881 *et seq.*

(n) Housing Act, 1936, ss. 91, 110.

(o) Metropolitan Management Acts, 1855, s. 183; 11 Halsbury's Statutes 929; 1862, ss. 72 and 100; 11 Halsbury's Statutes 964, 961.

(p) L.C.C. (Finance Consolidation) Act, 1912, s. 41.

(q) L.G.A., 1920, ss. 101 (6), 102 (1) (2); 10 Halsbury's Statutes 947, 948.

(r) Vaccination Act, 1867, s. 5; 13 Halsbury's Statutes 610; P.H. (London) Act, 1936, s. 12.

(s) Valuation (Metropolis) Act, 1869, ss. 28, 50; 14 Halsbury's Statutes 561, 575; L.G.A., 1920, s. 18 (f); 10 Halsbury's Statutes 895.

(t) P.H. (London) Act, 1936, s. 229.

(u) Education (Institution Children) Act, 1923; 7 Halsbury's Statutes 226.

(a) L.G.A., 1888, ss. 3 (l), 41 (7); 10 Halsbury's Statutes 688, 721; County Rates Acts, 1852 and 1866; 14 Halsbury's Statutes 520, 543.

(b) L.G.A., 1888, ss. 3 (xiii.), 30 (3); 10 Halsbury's Statutes 689, 708; Local Stamp Act, 1869; 11 Halsbury's Statutes 816.

(c) Finance Act, 1908, Part III.; Finance (1909-10) Act, 1910; L.G.A., 1888, s. 20; Finance Act, 1920, s. 13; Roads Act, 1920; Finance Acts, 1921, ss. 10, 22; 1922, ss. 14, 15; 1924, s. 18; 1926, ss. 13, 14; 1927, ss. 11, 12; 1928, ss. 12, 13; 1930, s. 6; 1931, ss. 2, 3, 4; and 1932, ss. 13, 14.

(d) County Rates Act, 1852, ss. 27, 28; 14 Halsbury's Statutes 524, 525; Local Authorities (Financial Provisions) Act, 1921, s. 2; 11 Halsbury's Statutes 1343.

(e) Valuation (Metropolis) Act, 1869, ss. 14, 16, 17, 32, 41, 42 (11); 14 Halsbury's Statutes 550 *et seq.*; L.G.A., 1888, s. 44; 10 Halsbury's Statutes 724; L.C.C. (General Powers) Act, 1893, s. 14; 11 Halsbury's Statutes 1115.

Public Protection. *Ambulances.*—Provision of (f).

Barbed Wire.—Power to require removal in certain cases (g).

Boating, Public.—Licensing of premises (h).

Buildings, Regulation of.—Various powers (i). See title LONDON BUILDING.

Bye-Laws for Good Rule and Government.—Power to make (k).

Canals Protection.—Power to require works (l).

Celluloid or Cinematograph Films.—Control of premises (m).

Charities.—Power to contribute to expenses of inquiries; power to require metropolitan borough councils to make returns as to charity property; registration of charitable gifts; registration of war charities and charities for the blind (n).

Children, Adoption of.—Power to act as guardian *ad litem*. Power to exercise the rights of parents over deserted children, orphans, etc. (o).

Children, Employment of.—Bye-laws; licences to children to take part in entertainments; assistance in respect of choice of employment (p).

Children, Prevention of Cruelty to.—Proceedings (q).

Cinematograph Exhibitions.—Licensing premises (r).

Coal and Coke, Sale of.—Bye-laws with regard to sale by weight and inspection as to quality (s).

Dangerous and Noxious Businesses.—Regulation and inspection (t).

Dangerous and Neglected Structures.—Requiring repair or demolition (u).

District Surveyors.—Appointment, etc., of district surveyors; regulating fees; bye-laws with respect to duties (a).

(f) P.H. (London) Act, 1936, ss. 230, 231; Education Act, 1921, s. 88 (2); 7 Halsbury's Statutes 178; L.G.A., 1920; 10 Halsbury's Statutes 883.

(g) Barbed Wire Act, 1893; 9 Halsbury's Statutes 206.

(h) L.C.C. (General Powers) Act, 1930, Part III; 23 Halsbury's Statutes 740.

(i) London Building Act, 1930.

(k) L.C.C. (General Powers) Act, 1934, s. 38; 27 Halsbury's Statutes 422.

(l) Canals Protection (London) Act, 1898; 14 Halsbury's Statutes 264.

(m) L.C.C. (Celluloid, etc.) Act, 1915; 13 Halsbury's Statutes 1196.

(n) L.G.A., 1888, s. 8 (xv); 10 Halsbury's Statutes 680; Charity Inquiries (Expenses) Act, 1892; 2 Halsbury's Statutes 800; L.C.C. (General Powers) Act, 1893, s. 14 (2); War Charities Act, 1916; 2 Halsbury's Statutes 400; Blind Persons Act, 1920; 20 Halsbury's Statutes 593; Schemes of the Charity Commissioners and the Board of Education.

(o) Adoption of Children Act, 1926; 9 Halsbury's Statutes 827; Poor Law Act, 1930, s. 52; 12 Halsbury's Statutes 904.

(p) Children and Young Persons Act, 1933, Part II; 26 Halsbury's Statutes 181; Unemployment Insurance Act, 1935, s. 81; 28 Halsbury's Statutes 550.

(q) Children and Young Persons Act, 1933, s. 98; 26 Halsbury's Statutes 234.

(r) Cinematograph Act, 1909; 19 Halsbury's Statutes 352; Regulations made by the Secretary of State, 1923; L.C.C. (General Powers) Act, 1923, s. 16; 1924, s. 29; 19 Halsbury's Statutes 357; Sunday Entertainments Act, 1932; 25 Halsbury's Statutes 921.

(s) Weights and Measures Act, 1889, Part II; 20 Halsbury's Statutes 399; L.C.C. (General Powers) Act, 1920, s. 41; 1923, ss. 55, 56; 11 Halsbury's Statutes 1383, 1415.

(t) London Building Act, 1930, ss. 5, 143, 145; 23 Halsbury's Statutes 214, 292, 294.

(u) *Ibid.*, ss. 128—142, 210, Sched. IV., Part II; 23 Halsbury's Statutes 287—292, 316, 347.

(a) *Ibid.*, ss. 104, 105, 154—160, 162, 163, 172—176, 178—183, 225, 236; 23 Halsbury's Statutes 274 *et seq.*; Housing, etc., Act, 1923, s. 2 (7); 13 Halsbury's Statutes 987.

- Disused Burial Grounds*.—Power to acquire for open spaces (b).
Dust Nuisance from Building Demolition.—Bye-laws (c).
Electricity.—Approval of works; appointment of inspectors; making of representations as to undertakings (d).
Employment Agencies.—Licensing, inspection and bye-laws (e).
Explosives.—Controlling manufacture; registering dealers; licensing factories, etc. (f).
Factories and Workshops.—Means of escape in case of fire; bye-laws and action in default of sanitary authorities (g).
Fertilisers and Feeding Stuffs.—Appointment of analysts and inspectors (h).
Fire Brigade.—Maintenance of London Fire Brigade (i).
Floods, Prevention of.—Approval of works; enforcement of regulations; warning of high tides in the river Thames (k).
Gas Meter Testing.—Testing (l).
Gas Supply and Testing.—Testing gas and apparatus; representations to Board of Trade as to prices (m).
Inflammatory Goods.—Enforcing regulations (n).
London Hydraulic Power Company's Works.—Consent to laying of mains (o).
Low-lying Land, Dwelling-houses on.—Regulating (p).
Massage and Special Treatment.—Registration and inspection of premises; bye-laws (q).
Music and Dancing Licences.—Issue of.
Overground Wires.—Bye-laws and control of (r).

(b) Open Spaces Act, 1906, ss. 6, 9, 12; 2 Halsbury's Statutes 386, 387; L.C.C. (General Powers) Act, 1905, ss. 41—54; 28 Halsbury's Statutes 151.

(c) P.H. (London) Act, 1906, s. 85.

(d) Various private electric lighting Acts and Electric Lighting Orders Confirmation Acts; L.C.C. (General Powers) Act, 1893, s. 20; London Electric Supply Acts, 1908 and 1910; London (Westminster and Kensington) Electric Supply Companies Act, 1908; London Electricity (No. 1) Act, 1925; London Electricity (No. 2) Act, 1925; Electricity (Supply) Acts, 1882 to 1926; London and Home Counties Electricity District Order, 1925.

(e) L.C.C. (General Powers) Acts, 1921, Part III.; 1926, s. 40; 11 Halsbury's Statutes 1347, 1883.

(f) Explosives Act, 1875; 8 Halsbury's Statutes 385; and Orders thereunder. L.G.A., 1888, s. 28 (2); 10 Halsbury's Statutes 707.

(g) Factory and Workshop Acts, 1901 and 1907; 8 Halsbury's Statutes 517, 607; P.H. (London) Act, 1906, ss. 82, 106, 128—131, 291, 292.

(h) Fertilisers and Feeding Stuffs Act, 1926; 1 Halsbury's Statutes 140; and Regulations made thereunder.

(i) Metropolitan Fire Brigade Act, 1865; 11 Halsbury's Statutes 907; L.C.C. (General Powers) Act, 1908, s. 74; 11 Halsbury's Statutes 1297; Fire Brigade Pensions Act, 1925; 13 Halsbury's Statutes 1095.

(k) Thames River (Prevention of Floods) Acts, 1879 to 1929; 20 Halsbury's Statutes 325, 358; L.C.C. (General Powers) Act, 1922, s. 14; 25 Halsbury's Statutes 933.

(l) Sale of Gas Act, 1850; 8 Halsbury's Statutes 1230; Metropolis Gas Act, 1861; 8 Halsbury's Statutes 1253; Gas Regulation Act, 1920; 8 Halsbury's Statutes 1278; and Orders thereunder.

(m) Metropolis Gas Act, 1860; 8 Halsbury's Statutes 1240; Commercial Gas Act, 1875; Gas Light and Coke Company's Act, 1876; South Metropolitan Gas Company's Act, 1876; Gas Light and Coke and other Companies' Acts Amendment Act, 1880; Metropolis Gas (Prepayment Meter) Act, 1900; London Gas Act, 1906; Gas Undertakings Acts, 1920 to 1932.

(n) Fabrics (Misdescription) Act, 1913; 13 Halsbury's Statutes 951.

(o) London Hydraulic Power Company's Acts, 1884 and 1893, s. 13.

(p) London Building Act, 1900, ss. 3, 146—148.

(q) L.C.C. (General Powers) Act, 1920, Part IV.; 11 Halsbury's Statutes 1337; 1926, s. 40; 11 Halsbury's Statutes 1385.

(r) London Overground Wires, etc., Act, 1933; 26 Halsbury's Statutes 604.

Performing Animals.—Registration of persons exhibiting, etc. (s).

Petroleum, Carbide of Calcium, etc.—Licensing; supervising conveyance; registering petroleum oil depots (t).

Racecourses.—Licensing (u).

Reservoirs.—Power to require information (a).

Shops.—Powers of a local authority (b).

Sky Signs.—Action in default in relation to the removal of (c).

Streets, Formation of.—Sanctioning new streets, and alteration of ways so as to form streets; bye-laws (d).

Streets, Naming of, and Numbering of Houses.—Settling and altering names and numbers; action in default of local authorities (e).

Telegraph Works.—Consent to works (f).

Theatres, Music Halls, etc.—Licensing and supervision of premises (g).

Theatrical Employers.—Registration (h).

Timber Stacks.—Control of (i).

Tribunal of Appeal.—Superannuation of servants, and payment of expenses (k).

Weights and Measures.—Inspection, verification, stamping, etc. (l).
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Traffic. Aerodromes.—Power to provide (m).

Bridges.—Provision, improvement and maintenance of county and other bridges and approaches; appointment of a county surveyor; bye-laws; permits for use of bridges by heavy motor vehicles; power to require metropolitan borough councils to maintain roadways or footways of bridges (n).

(s) *Performing Animals (Regulation) Act, 1925*; 1 Halsbury's Statutes 385.

(t) *Petroleum (Consolidation) Act, 1928*; 18 Halsbury's Statutes 1170; and Orders made thereunder; L.C.C. (General Powers) Act, 1912, Part II.; 11 Halsbury's Statutes 1516.

(u) *Racecourses Licensing Act, 1879*; 8 Halsbury's Statutes 1168; L.G.A., 1888, s. 3 (v.); 10 Halsbury's Statutes 689.

(a) *Reservoirs (Safety Provisions) Act, 1930*; 23 Halsbury's Statutes 755.

(b) *Shops Acts, 1912 to 1936*; 8 Halsbury's Statutes 618 *et seq.*; *Hairdressers' and Barbers' Shops (Sunday Closing) Act, 1930*.

(c) *London Building Act, 1930*, ss. 140, 150; 28 Halsbury's Statutes 295.

(d) *Metropolis Management Act, 1855*, s. 202; 11 Halsbury's Statutes 934; *London Building Act, 1930*, Part II.

(e) *London Building Act, 1930*, Part IV., and s. 222.

(f) *Telegraph Act, 1892*, s. 5; 19 Halsbury's Statutes 284.

(g) L.G.A., 1888, ss. 3 (v.), 7 (a), 28 (2), 41 (1) (b), 78 (8); 10 Halsbury's Statutes 688 *et seq.*; *Disorderly Houses Act, 1751*; 4 Halsbury's Statutes 359; *Public Entertainments Act, 1875*; *Theatres Act, 1848*; 19 Halsbury's Statutes 335;

L.C.C. (General Powers) Acts, 1915, Part III.; 1923, Part III.; 1924, ss. 29, 30; *Metropolis Management and Building Acts Amendment Act, 1878*, ss. 11—18, 21; *Metropolitan Board of Works (Various Powers) Act, 1882*, s. 45; L.C.C. (Parks, etc.) Act, 1915, s. 8; *Children and Young Persons Act, 1933*, s. 12 (5) (a); *Sunday Entertainments Act, 1932*; 25 Halsbury's Statutes 921; P.I.L. (London) Act, 1936, s. 172.

(h) *Theatrical Employers Registration Acts, 1925 and 1928*; 19 Halsbury's Statutes 858, 882.

(i) *London Building Act, 1930*, ss. 219, 222; 23 Halsbury's Statutes 318, 319.

(j) *Ibid.*, ss. 201, 207; L.C.C. (General Powers) Act, 1931, s. 48.

(k) L.G.A., 1888, s. 3 (xiii.); 10 Halsbury's Statutes 688; *Weights and Measures Acts, 1878 to 1926*; 20 Halsbury's Statutes 360 *et seq.*; *Finance Act, 1921*, s. 18; 16 Halsbury's Statutes 875; L.C.C. (General Powers) Act, 1920, s. 41; 1928, s. 55, 56; 11 Halsbury's Statutes 1383 *et seq.*

(m) *Air Navigation Act, 1920*, s. 8; 19 Halsbury's Statutes 196.

(n) L.G.A., 1888, ss. 3 (viii.) 6; 10 Halsbury's Statutes 689, 691; *Statute of Bridges, 1530*; *Bridges Acts, 1740—1929*; *Metropolis Toll Bridges Act, 1877*;

Embankments.—Maintenance, and lighting (o).

Ferries.—Provision of free ferry at Woolwich (p).

Highways.—Contributions towards maintenance, improvement, etc. (q).

Main Roads.—Power to declare; preservation of roadside wastes (r).

Motor Cars.—Registration of; licensing of drivers (s).

Railways and Canals.—Approval and inspection of certain railway bridges; control of railway works where council's property or public interests are affected (t).

Street Improvements.—Making; contributing to local improvements (u).

Subways.—Construction and maintenance; requiring companies to lay pipes and mains in (a).

Tunnels.—Construction and maintenance of tunnels under Thames; bye-laws (b). [473]

Public Amenities. Advertisements, Regulation of.—Bye-laws (c).

Alexandra Park and Palace.—Power to contribute (d).

Ancient Monuments.—Powers of a local authority as to (e).

Bands.—Maintenance of (f).

Metropolitan Board of Works (Various Powers) Act, 1882, ss. 41, 48; 20 Halsbury's Statutes 342, 344; London Parks and Works Act, 1887; 12 Halsbury's Statutes 380; L.C.C. (General Powers) Acts, 1892, s. 40; 1893, s. 46; 11 Halsbury's Statutes 1112 *et seq.*; London Government Act, 1890, s. 6 (2); 11 Halsbury's Statutes 1223; Road Traffic Act, 1930, s. 24; Special Acts; L.C.C. (General Powers) Act, 1930, s. 58.

(o) Thames Embankment Acts, 1862 to 1873; Metropolitan Board of Works (Various Powers) Act, 1876; London Parks and Works Act, 1887; 12 Halsbury's Statutes 380; London Government Act, 1890, s. 6 (2); 11 Halsbury's Statutes 1223; Transfer of Powers (London) Order, 1933; 26 Halsbury's Statutes 613.

(p) Metropolitan Board of Works (Various Powers) Act, 1885, ss. 14—23, 57; L.C.C. (General Powers) Acts, 1892, s. 39; 1893, ss. 6—7; 11 Halsbury's Statutes 1112 *et seq.*; Ferries (Acquisition by Local Authorities) Act, 1919; 8 Halsbury's Statutes 660.

(q) L.G.A., 1888, s. 11 (10); 10 Halsbury's Statutes 693.

(r) *Ibid.*, ss. 11, 41; *ibid.*, 693, 720; Highways and Locomotives (Amendment) Act, 1878, s. 15; 9 Halsbury's Statutes 172; L.C.C. (General Powers) Act, 1896, s. 31; 11 Halsbury's Statutes 1220.

(s) Roads Act, 1920; 19 Halsbury's Statutes 85; and Road Traffic Act, 1930, and Regulations and Orders thereunder.

(t) Railway Companies Acts; Railways (Electrical Power) Act, 1903; 14 Halsbury's Statutes 271; Railway and Canal Traffic Acts, 1888 to 1894; Railways Act, 1921, ss. 10 (1), 78 (1); 14 Halsbury's Statutes 220 *et seq.*

(u) Metropolitan Management Acts, 1855, s. 144; and 1862, s. 72; 11 Halsbury's Statutes 920 *et seq.*; L.G.A., 1888, ss. 11 (10), 65; 10 Halsbury's Statutes 695, 739; London Building Act, 1900, s. 23; Development and Road Improvement Funds Act, 1909; 9 Halsbury's Statutes 207; Unemployment (Relief Works) Act, 1920; 20 Halsbury's Statutes 652; L.C.C. (General Powers) Acts, 1924, s. 63, and 1930, s. 58.

(a) Street Improvement Acts; L.C.C. Subways Act, 1893.

(b) Thames Tunnel (Blackwall) Acts, 1887 and 1888; Thames Tunnel (Greenwich to Millwall) Act, 1897; Thames Tunnel (Rotherhithe and Ratcliff) Act, 1900; L.C.C. (General Powers) Act, 1900, ss. 25—27; Thames Tunnel (North and South Woolwich) Act, 1909; L.C.C. (General Powers) Act, 1909, s. 62.

(c) Advertisements Regulation Acts, 1907 and 1925; 13 Halsbury's Statutes 908, 1113; Ancient Monuments Consolidation and Amendment Act, 1913; 12 Halsbury's Statutes 392.

(d) Middlesex County Council Act, 1930, s. 54.

(e) Ancient Monuments Consolidation and Amendment Act, 1913; 12 Halsbury's Statutes 392.

(f) L.C.C. (General Powers) Act, 1935, s. 42; 28 Halsbury's Statutes 151.

Historical Buildings, Monuments and Works of Art.—Preservation or purchase of (g).

London Squares.—Power to provide for maintenance; power to restrict building (h).

Museums.—Maintenance of (i).

Parks and Open Spaces.—Provision of; bye-laws; facilities for games, etc. (k).

Petroleum Filling Stations.—Bye-laws as to amenities (l).

Wild Birds Protection.—Powers of local authority (m).

Public Assistance.—Authority under the Poor Law Act, 1930, for the Administrative County of London. See title PUBLIC ASSISTANCE IN LONDON.

Blind Persons.—Welfare of (n).

Emigration.—Powers to assist (o).

Old Age Pensions.—Appointment of local pension committee (p).

Small Holdings and Allotments.—Powers to provide and assist (q).

Unemployment.—Power to provide works (r). [474]

Health Services. Appeals.—Appointment of an Appeal Committee for appeals from orders or acts of metropolitan borough councils (s).

(g) Monuments (Metropolis) Act, 1878; London Open Spaces Act, 1893, s. 19; L.C.C. (General Powers) Acts, 1896, s. 29; 1898, s. 60; 1906, s. 80; 11 Halsbury's Statutes 1224, 1279; War Memorials (Local Authorities' Powers) Act, 1923; 10 Halsbury's Statutes 875; Town and Country Planning Act, 1932, ss. 17, 50 (5); London Building Act, 1930, s. 213.

(h) Town Gardens Protection Act, 1863; 12 Halsbury's Statutes 872; London Squares and Enclosures (Preservation) Act, 1906; London Squares Preservation Act, 1931.

(i) L.C.C. (General Powers) Acts, 1901, s. 46; 1906, s. 30; 11 Halsbury's Statutes 1270; Bethlehem Hospital (Amendment) Act, 1931.

(k) Metropolis Management Acts, 1855, s. 144; 1850, s. 10; 11 Halsbury's Statutes 920, 960; Metropolitan Commons Acts, 1800 to 1878; 2 Halsbury's Statutes 507 *et seq.*; Open Spaces Act, 1887, s. 4; 2 Halsbury's Statutes 280; Metropolitan Board of Works (Various Powers) Acts, 1875 to 1888; London Parks and Works Act, 1887; 12 Halsbury's Statutes 380; L.G.A., 1888, s. 40 (8); 10 Halsbury's Statutes 719; L.C.C. (General Powers) Acts, 1890, ss. 14—10; 1898, s. 61; 11 Halsbury's Statutes 1018 *et seq.*; London Open Spaces Act, 1893; Commons Act, 1899; 2 Halsbury's Statutes 007; Open Spaces Act, 1906; 12 Halsbury's Statutes 882; L.C.C. (General Powers) Acts, 1918, s. 12; 1919, ss. 9—11; 1925, ss. 18—29; 1926, ss. 9—13; 1929, s. 57; 11 Halsbury's Statutes 1298 *et seq.*; 1932, Part V.; 1935, Part V.; Town and Country Planning Act, 1932, s. 26.

(l) Petroleum (Consolidation) Act, 1928; 13 Halsbury's Statutes 1170.

(m) L.G.A., 1888, s. 3 (xiii.); 10 Halsbury's Statutes 689; Wild Birds Protection Acts, 1880 to 1908; 1 Halsbury's Statutes 355 *et seq.*

(n) Blind Persons Act, 1920; 20 Halsbury's Statutes 593; Education Act, 1921; 7 Halsbury's Statutes 130; Wireless Telegraphy (Blind Persons Facilities) Act, 1926; 19 Halsbury's Statutes 316; L.G.A., 1920, s. 102 (1); 10 Halsbury's Statutes 948.

(o) L.G.A., 1888, ss. 40 (9), 60 (1) (d); 10 Halsbury's Statutes 719, 742; Children and Young Persons Act, 1933, s. 84; Empire Settlement Act, 1922; 5 Halsbury's Statutes 813; Poor Law Act, 1930, s. 68; 12 Halsbury's Statutes 1002.

(p) Old Age Pensions Act, 1936; Old Age Pensions Consolidated Regulations, 1922.

(q) Small Holdings and Allotments Acts, 1908 to 1926; 1 Halsbury's Statutes 257 *et seq.*; Ministry of Agriculture and Fisheries Act, 1919, Part III.; 3 Halsbury's Statutes 453; Land Settlement (Facilities) Act, 1919; 1 Halsbury's Statutes 288; Sailors and Soldiers (Gifts for Land Settlement) Act, 1916; 17 Halsbury's Statutes 534.

(r) Unemployment (Relief Works) Act, 1920; 20 Halsbury's Statutes 652; Public Works Facilities Act, 1930; 23 Halsbury's Statutes 760.

(s) Metropolis Management Acts, 1855, ss. 202, 211, 212; 1862, ss. 29, 30, 57;

Care of the Sick.—Administration. Appointment of a Hospitals and Medical Services Committee and Sub-committees (t).

Hospital Treatment, etc.—Provision of places for reception and treatment (u).

Non-institutional Treatment of the Sick.—Provision of assistance for poor persons; contributions to nursing associations; provision of dispensaries (a).

Common Lodging Houses.—Bye-laws (b).

Dairies, Cowsheds and Milkshops.—Inspection of cattle and milk (c).

Diseases of Animals.—Powers of local authority; precautions to prevent contagious diseases (d).

Drowned Bodies.—Expenses of burial (e).

Epidemic Diseases.—Powers and duties assigned by Minister of Health under regulations (f).

Food Protection.—Bye-laws for promoting sanitary conditions. Power to register premises used for manufacture (g).

Fried Fish Vendors, Fish Curers and Rag and Bone Dealers.—Bye-laws (h).

Housing.—Local housing authority. See title HOUSING.

Ice Creams or Similar Commodities.—Power to register premises (i).

Infectious Diseases.—Power to add to list of notifiable diseases (k).

Information on Health Questions.—Publication of; delivery of lectures; display of pictures (including cinematograph display) (l).

Juvenile Smoking.—Duty of preventing in parks, etc. (m).

Local Sewers.—Control over (n).

1890, s. 6; 11 Halsbury's Statutes 934 *et seq.*; P.H. (London) Act, 1936, ss. 83 (3), 105, 109 (3), 286; L.G.A., 1888, s. 3 (xv.); 10 Halsbury's Statutes 689.

(t) Administrative Scheme under L.G.A., 1929; L.G.A., 1929, ss. 13, 14; Poor Law Act, 1930, s. 122; 12 Halsbury's Statutes 1032.

(u) L.G.A., 1929, ss. 14, 18; 10 Halsbury's Statutes 891, 894; Poor Law Act, 1930, ss. 15, 67, 131; 12 Halsbury's Statutes 978, 1001, 1034; L.C.C. (General Powers) Act, 1928, s. 28; 11 Halsbury's Statutes 1410.

(a) Poor Law Act, 1930, ss. 17, 67, 127, 128; 12 Halsbury's Statutes 978 *et seq.*

(b) P.H. (London) Act, 1936, ss. 162, 276.

(c) Tuberculosis Orders, 1925 and 1931; Diseases of Animals Act, 1925; 1 Halsbury's Statutes 438; Milk and Dairies (Consolidation) Act, 1915; 8 Halsbury's Statutes 804; Milk and Dairies Order, 1926; Milk and Dairies (Amendment) Act, 1922; 8 Halsbury's Statutes 879; P.H. (London) Act, 1936, s. 144.

(d) Diseases of Animals Acts, 1894-1935; 1 Halsbury's Statutes 389 *et seq.*; and Orders of the Minister of Agriculture and Fisheries; L.G.A., 1888, s. 28 (2); 10 Halsbury's Statutes 707; Dogs Act, 1906; 1 Halsbury's Statutes 351; L.C.C. (General Powers) Act, 1908, s. 72; 11 Halsbury's Statutes 1297.

(e) L.G.A., 1888, s. 67; 10 Halsbury's Statutes 740; Burial of Drowned Persons Acts, 1808 and 1886; 2 Halsbury's Statutes 273, 279.

(f) P.H. (London) Act, 1936, ss. 214, 293.

(g) *Ibid.*, ss. 183, 187, 276.

(h) *Ibid.*, ss. 146, 276.

(i) *Ibid.*, ss. 188, 190.

(k) *Ibid.*, s. 305 (3).

(l) *Ibid.*, s. 208.

(m) Children and Young Persons Act, 1933, s. 7 (3); 26 Halsbury's Statutes 176.

(n) P.H. (London) Act, 1936, ss. 14-16, 27, 33-36, 46-51, 55.

Main Drainage.—Construction and management of (o).

Maternity and Child Welfare.—Arrangements with borough councils and voluntary associations (p).

Medical Officer of Health (County).—Appointment of (q).

Medical Officers of Health (Local), Sanitary Inspectors, and Health Visitors.—Payment of half of salaries; representations to Minister of Health (r).

Midwives.—General supervision (s).

Mortuaries.—Provision of (t).

Nuisances.—Bye-laws (u).

Nursery Schools.—Supplying or aiding (a).

Nursing Homes.—Registration and inspection (b).

Offensive Trades.—Bye-laws (c).

Pipes, Drains, etc.—Bye-laws (d).

Post-Mortem Rooms.—Power to require metropolitan borough councils to maintain (e).

Rats and Mice.—Local authority, so far as the council's sewers and sludge vessels are concerned, for destruction of (f).

Refuse.—Bye-laws (g).

River Pollution.—Action against persons (h).

Sanatoria.—Power to erect and maintain (i).

School Children, Cleansing of.—Power to require (k).

School Children, Feeding of Neccessitous.—Power to aid provision of meals (l).

School Children, Medical Inspection and Treatment of.—Duty of providing for (m).

(o) P.H. (London) Act, 1936, ss. 14—16, 27—36, 56—58; Special Acts; Finance Act, 1921, s. 34; 9 Halsbury's Statutes 632.

(p) L.G.A., 1920, s. 101; 10 Halsbury's Statutes 946; P.H. (London) Act, 1936, s. 253.

(q) P.H. (London) Act, 1936, s. 7.

(r) *Ibid.*, ss. 9, 12, 13.

(s) Midwives Acts, 1902, 1918, and 1926; 11 Halsbury's Statutes 720 *et seq.*

(t) P.H. (London) Act, 1936, ss. 237—239, 291, 292.

(u) L.C.C. (General Powers) Act, 1934, s. 38; 28 Halsbury's Statutes 422; P.H. (London) Act, 1936, ss. 84, 107, 118, 139, 270, 291, 292.

(a) Education Act, 1921, s. 21; 7 Halsbury's Statutes 140.

(b) P.H. (London) Act, 1936, ss. 240—249.

(c) *Ibid.*, s. 147.

(d) *Ibid.*, ss. 34, 276.

(e) *Ibid.*, ss. 236, 237.

(f) Rats and Mice (Destruction) Act, 1919, s. 2 (1); 13 Halsbury's Statutes 993.

(g) P.H. (London) Act, 1936, ss. 84, 138, 139, 276, 291, 292.

(h) L.G.A., 1888, s. 14; 10 Halsbury's Statutes 697; Rivers Pollution Prevention Acts, 1876 and 1893; 20 Halsbury's Statutes 316 *et seq.*

(i) P.H. (London) Act, 1936, ss. 219, 220.

(k) Education Act, 1921, s. 87; 7 Halsbury's Statutes 177; P.H. (London) Act, 1936, ss. 126, 175, 176.

(l) Education Act, 1921; 7 Halsbury's Statutes 130.

(m) M. of H. Act, 1919, s. 3; 3 Halsbury's Statutes 417; Education Act, 1921, ss. 80, 81; 7 Halsbury's Statutes 174, 175.

Seamen's Lodging-Houses.—Making bye-laws (*n*).

Shell-fish, Cleansing of.—Powers to provide apparatus (*o*).

Smoke Abatement.—Enforcing provisions in Part V. of the P.H. (London) Act, 1936, on default or request of sanitary authority; bye-laws; proceedings against railway companies; power to spend £500 a year in experiments; maintenance of rain-water gauges for detection of atmospheric pollution (*p*).

Town Planning.—Local town planning authority. See title TOWN PLANNING.

Tuberculosis.—Arrangements for treatment (*g*).

Venereal Diseases.—Facilities for diagnosis, treatment and information (*r*).

Water-Closets, Cesspools, etc.—Bye-laws (*s*).

Water Supply.—Power to require; to complain to Railway and Canal Commission as to any failure of Metropolitan Water Board; promotion of Bills (*t*).

Education.—Local education authority under the Education (Local Authorities) Act, 1931, for the administrative county of London. See the various titles commencing EDUCATION and the cross-titles there referred to.

Apprentices.—Power to bind poor law children (*u*).

Poor Law and Certified Schools.—Provision of (*a*).

Training Ships.—Power to acquire and furnish (*b*).

The Mentally Disordered.—Local authority for lunacy and mental treatment (*c*).

Mentally Defective.—Local authority under Mental Deficiency Acts (*d*).

Inebriates.—Local authority under Inebriates Acts (*e*). [475]

(*n*) Merchant Shipping Act, 1894, s. 214; 18 Halsbury's Statutes 238; Order in Council, June 13, 1917.

(*o*) P.H. (London) Act, 1936, s. 191.

(*p*) *Ibid.*, ss. 147–154, 291; Railways Clauses Consolidation Act, 1845, s. 114; 14 Halsbury's Statutes 74; Regulation of Railways Act, 1863, s. 19; 14 Halsbury's Statutes 181; Road Traffic Act, 1930, s. 30; 23 Halsbury's Statutes 633.

(*g*) Public Health (Tuberculosis) Regulations, 1930; P.H. (London) Act, 1936, ss. 219–223.

(*r*) Public Health (Venereal Diseases) Regulations, 1916.

(*s*) P.H. (London) Act, 1936, ss. 84, 107, 276.

(*t*) Metropolis Water Acts, 1871 and 1897; 20 Halsbury's Statutes 226, 250; London Water Act, 1892, s. 3; P.H. (London) Act, 1936, ss. 96, 97, 292.

(*u*) Poor Law Act, 1930, s. 59; 12 Halsbury's Statutes 998.

(*a*) *Ibid.*, ss. 53, 55; *ibid.*, 906, 997.

(*b*) *Ibid.*, s. 135; *ibid.*, 1035.

(*c*) L.G.A., 1888, s. 3 (vi.); 10 Halsbury's Statutes 688; L.G.A., 1929; 10 Halsbury's Statutes 883; Lunacy Acts, 1890 to 1922; 11 Halsbury's Statutes 17 *et seq.*; Mental Treatment Act, 1930; L.C.C. (General Powers) Acts, 1909 to 1915; 11 Halsbury's Statutes 1298 *et seq.*; Asylums Officers' Superannuation Act, 1909; 11 Halsbury's Statutes 152; L.C.C. (Parks, etc.) Act, 1915.

(*d*) Mental Deficiency Acts, 1913 to 1927; 11 Halsbury's Statutes 160 *et seq.*; L.G.A., 1929; 10 Halsbury's Statutes 883; Asylums and Certified Institutions (Officers Pensions) Act, 1918; 11 Halsbury's Statutes 197.

(*e*) Inebriates Acts, 1879 to 1899; 9 Halsbury's Statutes 945 *et seq*

Domestic Services.—*County Property.*—Management of county property; powers to acquire, hold, alienate, lease and exchange land (*f*).

County Records.—Accommodation for records of quarter sessions and justices; directions with respect to other records (*g*).

Deposit of Parliamentary Documents, etc. Fees for Inspection, etc.—Power to charge (*h*).

Insurance.—Power to maintain a fund for insurance against fire risks (*i*).

Press, Exclusion from Meetings.—Power to require (*k*).

Staff.—Superannuation and compensation; contribution to the funds of hospitals in which employees are treated; compensation on abolition of office, or on re-organisation; gratuities to temporary employees or their widows or families (*l*). [476]

Miscellaneous Functions. *Action in Default.*—Power of acting when local authorities fail to carry out certain statutory duties; power of acting in default if certain owners or occupiers of premises fail to carry out prescribed works (*m*).

Associations and Conferences.—Power to subscribe up to £1,000 a year (*n*).

Civilities.—Power to expend not exceeding £2,500 in any one year in official hospitality and ceremonies (*o*).

(*f*) L.G.A., 1888, ss. 3 (iv.), 64, 65, 79 (1); 10 Halsbury's Statutes 688 *et seq.*; P.H.A., 1875, ss. 176, 177; 13 Halsbury's Statutes 700, 701; County Buildings Acts, 1820, 1837, 1847; 10 Halsbury's Statutes 586 *et seq.*; Metropolis Management Act, 1855, s. 154; L.C.C. (General Powers) Acts, 1899, ss. 10, 23; 1924, s. 59; L.C.C. (Money) Act, 1924, s. 6; County Office Site (London) Act, 1906; Special Acts.

(*g*) L.G.A., 1888, ss. 64 (3), 75 (5), 82 (11) (a); 10 Halsbury's Statutes 738 *et seq.*; Ballot Act, 1872, Sched. I., r. 64 (b); 7 Halsbury's Statutes 448.

(*h*) L.C.C. (General Powers) Act, 1931, s. 40; 24 Halsbury's Statutes 278.

(*i*) L.C.C. (General Powers) Acts, 1924, s. 60; 1929, s. 50; 11 Halsbury's Statutes 1370, 1425.

(*k*) Local Authorities (Admission of the Press to Meetings) Act, 1908; 10 Halsbury's Statutes 544.

(*l*) Superannuation (Metropolis) Act, 1866; 11 Halsbury's Statutes 1003; L.C.C. (General Powers) Acts, 1891, ss. 60—69; 1892, s. 41; 1895, s. 44; 1907, Part VIII.; 1910, s. 45; 1912, Part V.; 1921, s. 31; 1924, ss. 81, 82; 1929, ss. 53, 54; 11 Halsbury's Statutes 1108 *et seq.*; 1930, ss. 27—34, 60, 61; 23 Halsbury's Statutes 857, 863, 864; Asylums and Certified Institutions (Officers Pensions) Act, 1913; 11 Halsbury's Statutes 187; Metropolitan Fire Brigade Act, 1865; 11 Halsbury's Statutes 997; Pensions (Increase) Act, 1920; 16 Halsbury's Statutes 804; Finance Act, 1921, s. 52; 9 Halsbury's Statutes 690; Pensions (Increase) Act, 1924; 16 Halsbury's Statutes 932; Fire Brigade Pensions Act, 1925; 13 Halsbury's Statutes 1005; L.G.A., 1929, ss. 119, 121, 123, 124; 10 Halsbury's Statutes 960 *et seq.*

(*m*) Highways and Locomotives (Amendment) Act, 1878, s. 10; 9 Halsbury's Statutes 170; Metropolis Management (Thames River Prevention of Floods) Amendment Act, 1879, s. 18; 20 Halsbury's Statutes 330; P.H. (London) Act, 1936, ss. 95 (5), 261, 292; Housing Act, 1936, s. 175; London Building Act, 1930, ss. 40, 135, 140, 191; London Underground Wires, etc., Act, 1933, s. 7; 26 Halsbury's Statutes 607; Local Authorities (Financial Provisions) Act, 1921, s. 2; 11 Halsbury's Statutes 1343; Metropolis Water Act, 1871, s. 10; 20 Halsbury's Statutes 229.

(*n*) L.C.C. (General Powers) Act, 1921, s. 30; 11 Halsbury's Statutes 1356.

(*o*) L.C.C. (General Powers) Act, 1935, s. 63; 28 Halsbury's Statutes 159.

Destructive Insects.—Enforcing Orders and paying compensation (p).
Expenses of Members of Council.—Payment for travelling and subsistence (q).

Loan Societies.—Confirmation and record of rules (r).

Military and Naval Lands.—Power to purchase and to lease public lands (s).

Prevention of Cruelty to Animals.—Powers respecting exportation and shipment of horses (t).

Scientific Societies.—Registration of rules; hearing appeals against Registrar of Friendly Societies (u).

Special Inquiries.—Power to expend £1,000 a year in investigating subjects of general importance (a).

Statistics.—Receiving annual reports of metropolitan borough councils and local medical officers of health, and weekly lists of births; power to require rating authorities to furnish information, and metropolitan borough councils to make returns as to charity property; power to request Registrar-General to supply statistical information (b).

Transfer of Powers.—Power to apply for transfer of powers from Government departments and other authorities; power to apply to Minister of Health for redistribution of powers between the L.C.C. and the metropolitan borough councils and city corporation (c). [477]

Exercise of the Council's Powers and Duties.—A detailed catalogue of the services performed by the Council would cover many pages and would be most complex. Moreover, such a catalogue would prove misleading as a picture of their actual activities. An item such as "Education" would take up less space in the enumeration than scores of items involving the Council in little or no work or expenditure, and these volumes are concerned equally with local government administration as with local government law. In the following statement the chief services of the Council are classified according to the expenditure upon them in a recent year, since the transfer to them of poor law functions, but before the transfer to the London Passenger Transport Board of the tramway service. Expenditure includes debt charges, but not expenditure out of loan. Within each group the services are arranged in order of magnitude. A certain amount of

(p) L.G.A., 1888, s. 3 (xiii.); 10 Halsbury's Statutes 680; Destructive Insects and Pests Acts, 1877 and 1907; 1 Halsbury's Statutes 62 *et seq.*

(q) L.C.C. (General Powers) Acts, 1911, s. 17; 1926, s. 37; 11 Halsbury's Statutes 1310 *et seq.*; Education Act, 1921, s. 126; 7 Halsbury's Statutes 197.

(r) L.G.A., 1888, s. 3 (xv.); 10 Halsbury's Statutes 689; Loan Societies Act, 1840, s. 4; 10 Halsbury's Statutes 508.

(s) Military Lands Acts, 1892 to 1903; 17 Halsbury's Statutes 574 *et seq.*; Naval Lands (Volunteers) Acts, 1908; 17 Halsbury's Statutes 600.

(t) Diseases of Animals Act, 1910; 1 Halsbury's Statutes 426.

(u) L.G.A., 1888, s. 3 (xv.); 10 Halsbury's Statutes 688; Scientific Societies Act, 1843; 10 Halsbury's Statutes 477.

(a) L.C.C. (General Powers) Act, 1899, s. 12; 11 Halsbury's Statutes 1114.

(b) L.G.A., 1888, ss. 10 (1), 83 (12); 1929, s. 51; 10 Halsbury's Statutes 699 *et seq.*; P.H. (London) Act, 1930, ss. 8 (6), 192 (2), 255 (5); L.C.C. (General Powers) Acts, 1899, s. 14 (1), (2); 1929, s. 61; Census Acts.

(c) L.G.A., 1888, ss. 10, 20, 41 (7); 10 Halsbury's Statutes 692 *et seq.*; L.C. (Transfer of Powers) Act, 1903; 10 Halsbury's Statutes 841; London Government Act, 1890, s. 5 (3), (4); 11 Halsbury's Statutes 1228; L.G.A., 1929, s. 64; 10 Halsbury's Statutes 927.

duplication arises between one expenditure-group and another, but not within the same expenditure-group. For example, "Public Assistance" includes "Casual Wards" and both are enumerated in their appropriate groups. Similarly, "Education" includes "Secondary Schools," "Technical and Art Institutions" and many other entries. [478]

I. SERVICES INVOLVING AN ANNUAL EXPENDITURE EXCEEDING £1,000,000.—(1) Education; (2) Public assistance; (3) Tramways (*d*); (4) Hospitals (other than mental hospitals); (5) Housing; (6) Mental hospitals; (7) Establishment expenses; and (8) Highways (including bridges, ferry, tunnels, embankments and street improvements). [479]

II. SERVICES INVOLVING AN ANNUAL EXPENDITURE FROM £500,000 TO £1,000,000.—(1) Fire brigade; (2) Main drainage; (3) Secondary schools; (4) Technical and Art institutions; and (5) Street improvements. [480]

III. SERVICES INVOLVING AN ANNUAL EXPENDITURE FROM £100,000 TO £500,000.—(1) Schools for blind, deaf and defective children; (2) Scholarships and exhibitions; (3) Evening institutes; (4) Parks and open spaces; (5) Mental deficiency; (6) Medical inspection and treatment of school children; (7) Tuberculosis; (8) Bridges; (9) Ambulance service (accident and other than accident); (10) Half-salaries of borough health officers; (11) Administration of justice; (12) University education (Grants-in-aid); (13) Training of teachers; and (14) Feeding of school children. [481]

IV. SERVICES INVOLVING AN ANNUAL EXPENDITURE FROM £10,000 TO £100,000.—(1) Thames tunnels; (2) Venereal diseases; (3) Road Fund licences; (4) Welfare of the blind; (5) Ambulance service (other than accident); (6) Training colonies; (7) Woolwich Ferry; (8) Day continuation schools; (9) Industrial schools; (10) Accident ambulance service; (11) County sessions; (12) Coroners' inquests; (13) Casual wards; (14) Maternity and child welfare; (15) Criminal prosecutions; (16) Weights and measures; (17) Thames embankments; (18) Gas-meter testing; (19) Parliamentary expenses; (20) Bands in parks; (21) Dangerous structures; (22) Nursery schools; and (23) Reformatory schools. [482]

V. SERVICES INVOLVING AN ANNUAL EXPENDITURE FROM £1,000 TO £10,000.—(1) Central Criminal Courts; (2) Thames floods prevention; (3) Contributions towards arterial roads in adjoining counties; (4) Museums; (5) Places of detention; (6) Midwives; (7) Gas testing; (8) Prevention of cruelty to children; (9) Shops Acts; (10) Infant life protection (*e*); (11) Petroleum and explosives; (12) Town Planning; (13) Historical buildings; (14) Diseases of animals; (15) Land drainage; (16) Subways; (17) River piers; (18) Milk supply (tuberculosis); and (19) Means of escape from fire. [483]

As to the borrowing powers of the L.C.C. and their power of sanctioning loans raised by metropolitan borough councils, see pp. 228—226 of Vol. II.

(*d*) Transferred to London Passenger Transport Board by the London Passenger Transport Act, 1933; 26 Halsbury's Statutes 744.

(*e*) Transferred to metropolitan borough councils by the Transfer of Powers (London) Order, 1933; see now P.H. (London) Act, 1936, s. 256.

Committee Organisation of the Council (f).—The Standing Committees of the Council are as follows :

Education (50 members, viz. the chairman, vice-chairman and deputy-chairman of the Council, 35 other members of the Council, and 12 other persons, of experience in education and acquainted with the needs of the various kinds of schools in London, appointed by the Council).

Entertainments (16 members). Licensing of theatres, etc.

Establishment (12 members). Staff and offices.

Finance (15 members).

Fire Brigade and Main Drainage (16 members).

General Purposes (35 members, viz. one representative appointed by each of the other 16 standing committees, and 19 members appointed by the Council).

Highways (16 members).

Hospitals and Medical Services (24 members, viz. 17 members of the Council and 7 other persons appointed by the Council).

Housing and Public Health (22 members, viz. 17 members of the Council and 5 other persons appointed by the Council).

Mental Hospitals (48 members, viz. 28 members of the Council and 20 other persons, having special knowledge and experience with respect to the care, control and treatment of defectives, appointed by the Council).

Parks and Open Spaces (12 members).

Parliamentary (12 members).

Public Assistance (48 members, viz. the chairman, vice-chairman and deputy-chairman of the Council, 20 other members of the Council, and 16 other persons appointed by the Council).

Public Control (12 members). Matters dealt with, *inter alia*: explosives, petroleum, weights and measures, diseases of animals, shops, employment agencies, establishments for massage, performing animals, road fund and local taxation licences, coroners, markets, gas and electricity.

Supplies (12 members).

Town Planning and Building Regulation (17 members).

Welfare of the Blind (9 members).

There are also two special committees of the Council :

Appeal (6 members). See *ante*, p. 218—"Appeals."

Staff (Appeals) (6 members). Appeals by officers and employees, other than teachers and certain others, with regard to any accusation or proposal affecting their position in the service.

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The following committees also are appointed or constituted by the Council :

Joint Committee of Members and Staff (16 members, viz. 8 representatives appointed by the Council and 8 by the staff).

Joint Committee of Members and Schoolkeepers (8 members, viz. 4 representatives appointed by the Council and 4 by the staff).

London Old Age Pensions Committee (16 members appointed by the Council from within or without. At present four are members of the Council).

(f) See also title COMMITTEES at pp. 270—281 of Vol. III.

Survey of London (Joint Publishing) (7 members, viz. 4 appointed by the Council and 3 by the London Survey Committee).

Teachers Superannuation (8 members, viz. 4 appointed by the Council and 4 by the teachers). [485]

Most of the 17 standing committees of the Council enumerated above have sub-committees and four of them have many such (viz. Education, Hospitals and Medical Services, Mental Hospitals, and Public Assistance). If all committees are taken into account, including the 570 bodies of elementary school managers with their personnel of 5,280 and the 868 care committees with their personnel of 5,246, the total number of committees of all kinds assisting the Council in their work is about 1,770 with a personnel exceeding 14,000. This latter number includes, of course, many repetitions of individuals, but in the aggregate it represents an enormous addition to the 144 members of the Council, who appoint them and set them going. [486]

Working of the Committee Organisation.—All the powers and duties of the Council already enumerated stand referred for consideration and report (and, in certain cases, action) to one or more of the committees. A general power of delegation to committees was conferred on the Council by sect. 19 of the L.C.C. (General Powers) Act, 1934 (g). The standing orders of the Council provide orders of reference to each committee and the extent of delegation granted. Certain matters are reserved for decision by the Council, viz. matters of principle, numbers and remuneration of fixed staff; the appointment, promotion, resignation and retirement of all staff other than teachers, the staff employed at educational institutions, hospitals, public assistance institutions, other public assistance staff, and certain other grades; and the exercise of discretionary powers in respect of superannuation allowances. The scope of these matters reserved to the Council is definite enough except perhaps on questions arising under the head of "matters of principle." They include, *inter alia*: all questions having a continuous application in one branch of the Council's work (with certain enumerated exceptions) or a common and continuous application throughout two or more branches of the Council's work; all questions involving the institution or prosecution, but not the defence, of any proceedings in the High Court; the consideration of the Parliamentary Bills of the Council; obtaining powers to do entirely new work; all questions of the methods to be followed in exercising new powers or duties; expressions of opinion on proposals affecting the County or the local government of London; bye-laws and statutory regulations and rules; the bases for the provision of additional hospitals or institutions, their character and staffing; the bases for calculating the necessity for the provision of new or the enlargement of existing public elementary schools; the question of maintaining or taking over and maintaining, or of ceasing to maintain, schools not provided by the Council; the appointment of representatives of the Council on any authority or board; standard conditions on the grant of new licences for the storage of petroleum spirit in quantities exceeding 5,000 gallons; sanctions to borrowings by metropolitan borough councils; the making of schemes under the Housing Acts; action in default of metropolitan borough councils; the holding of conferences

(g) 27 Halsbury's Statutes 411. See also title COMMITTEES at p. 279 of Vol. III.

of a public nature; the communication of the thanks of the Council; the sale of property; the carrying out of works by direct employment of labour; the appointment and mode of payment of coroners and district surveyors, the dismissal of district surveyors and the alteration of coroners' and district surveyors' districts. [487]

Standing committees report to the Council action taken by them under delegated powers either forthwith or every six months (periodical reports). Report forthwith is required in connection with the acceptance of any tender of over £5,000.

Members of the press and the public are admitted to all meetings of the education committee, the public assistance committee, and any other committee while sitting as a licensing committee, but they may be excluded if exclusion is necessary in the public interest. See also title **ADMISSION TO MEETINGS**. [488]

Departmental Organisation of the Council's Work.—The advice and assistance of heads of departments are at the service of all committees, but most heads of departments by the nature of their duties have much closer contact with one or more committees than with others. The Clerk of the Council, the Comptroller of the Council and the Solicitor have contact with all committees; the architect and the valuer have contact with many committees; the chief officers of the mental hospitals department and the public control department have contact, mainly, with only one committee each. The following is a list of the heads of departments, with an indication of their duties where such an indication seems to be necessary.

The Clerk of the Council is the clerk of all the standing committees, except the education committee, the mental hospitals committee and the public assistance committee; he is the chief administrative official of the Council, has charge of the library and deals with statistics. See title **CLERK OF THE COUNTY COUNCIL**.

The Comptroller of the Council. See title **FINANCIAL OFFICER**.

The Chief Engineer and County Surveyor is responsible for engineering work in all branches of the Council's service, and, specifically, is responsible for the main drainage system, bridges, tunnels, subways, embankment walls, Woolwich Ferry and passenger piers, and for the high-pressure heating and ventilation of the Council's buildings.

The Architect is the superintending architect of metropolitan buildings under sect. 152 of the London Building Act, 1930 (h), and supervises buildings and architectural works of the Council.

The Solicitor.

The Chief Officer of the Fire Brigade. See title **LONDON FIRE BRIGADE**.

The M.O.H. See title **MEDICAL OFFICER OF HEALTH**.

The Valuer performs the duties of an estate agent in relation to the Council's property; housing matters; investigations as to population and means of transit; valuation and rating.

The Chief Officer of the Public Control Department. All matters within the reference of the Public Control Committee.

The Chief Officer of the Parks Department.

The Education Officer.

The Chief Officer of Supplies.

The Parliamentary Officer.

The Chief Officer of the Mental Hospitals Departments.
The Chief Officer of Public Assistance. [489]

Representation of the Council on other Authorities.—In addition to the committees that assist in the Council's work and are formally appointed by the Council, there are a number of other authorities or committees of other authorities upon which the Council are represented. Some of these bodies have a statutory basis or are constituted under schemes having statutory force; others have a non-statutory basis. They are of very various kinds and importance, from large spending authorities like the Metropolitan Water Board and the Port of London Authority to bodies with mainly advisory powers like the London and Home Counties Traffic Advisory Committee. The Council's representatives, again, may constitute a large or a small proportion of the members; they may be members of the Council, or of their staff, or other persons; and the period of office (sometimes indefinite) and the conditions of service vary widely. The following is a list of the authorities of most importance on which the Council appoint representatives with, in brackets, the number of the Council's representatives and, where the information is available, the total membership of each:

- Assessment Committees for each of the twenty-eight metropolitan boroughs (1 out of from 10 to 21).
- Atmospheric Pollution.—Standing Conference of Co-operating Bodies (1).
- Blind.—Advisory Committee on the Welfare of the Blind (1); Central Council for the London Blind (8 out of 29); Metropolitan Society for the Blind (2); National Institute for the Blind (1); South-Eastern and London Counties Association for the Blind (2).
- British Broadcasting Corporation.—Central Council for Broadcast Adult Education (1); Central Council for School Broadcasting (1).
- British Film Institute.—Advisory Committee (1).
- British Postgraduate Medical School.—Governing Body (2 out of 16).
- British Red Cross Society (2).
- Burnham Committees on Salaries of Teachers.—Public Elementary Schools (8); Secondary Schools (3); Technical Schools (3).
- Central Advisory Committee for the Certification of Teachers (1).
- Central Association for Mental Welfare (1).
- Central Council for District Nursing in London (5).
- Central Council for the Social Welfare of Girls and Women in London (6).
- Child Guidance Council (6).
- Crystal Palace Trustees (7 out of not exceeding 46).
- Greater London Regional Planning Committee (6 out of 30).
- Homeless Poor.—Metropolitan Poor Law Inspectors Advisory Committee (2).
- Hospitals and Institutions, etc., of the Council: Advisory Boards on Spiritual Ministration.—Church of England (4); Free Church Federation (4).
- Imperial College of Science and Technology (5); Huxley Memorial Committee (1).
- Insurance Committee for the County of London (9 out of 40).
- International Union of Local Authorities.—General Council (3); General Committee for Great Britain (10).

- Joint Industrial Councils.—Local Authorities Non-Trading Services (Manual Workers) (London District Council) (3); National Joint Industrial Council for Local Authorities Non-Trading Services (Manual Workers) (1).
- Juvenile Employment.—London Advisory Council (6); National Advisory Council (2).
- Juvenile Organisations Committees.—Board of Educational Juvenile Organisations Committee (1); Joint Council of London Juvenile Organisations Committees (6).
- Lee Conservancy Board (2 out of 15).
- Lee Conservancy Catchment Board (3 out of 21).
- London and Home Counties Association for the Deaf (6).
- London and Home Counties Joint Electricity Authority (6 out of 86).
- London and Home Counties Traffic Advisory Committee (6 out of 40).
- London Museum Trustees (1).
- London "Safety First" Council (3).
- London School of Hygiene and Tropical Medicine (1).
- Mental After-Care Association (1).
- Metropolitan Water Board (14 out of 66).
- National Institute for the Deaf (1).
- Polytechnics and Technical Institutes: Governing Bodies.—Battersea Polytechnic (9) and six other Polytechnics; City of London College (3); Sir John Cass Technical Institute (6).
- Port of London Authority (4 out of 28).
- Railway Assessment Authority (1).
- Royal Institute of British Architects.—Board of Architectural Education (1).
- Standing Joint Committee of Quarter Sessions and the L.C.C. (9 out of 18).
- Territorial Army and Air Force Association of the County of London (20).
- Thames Conservancy (1 out of 34).
- University of London Court (2).
- 18 non-educational charities (from 1 to 5 on each). [490]

Contact of the Council with other Local Government Authorities.—This section touches upon the constitutional or statutory relations between the L.C.C. and (i.) the Metropolitan Borough Councils, (ii.) the City of London Corporation, and (iii.) the Outer-London Local Authorities.

(i.) *Metropolitan Borough Councils.*—The administrative county is divided into twenty-eight metropolitan boroughs. Each metropolitan borough council has within its area certain statutory duties and powers (see titles LONDON and METROPOLITAN BOROUGH), and in the work of administration there is naturally co-operation between the L.C.C. and the metropolitan borough councils. [491]

In the first place there are various points of financial contact between the L.C.C. and the metropolitan borough councils. The most important of these are: the raising by the latter bodies of the rates necessary to meet the precepts of the former body; the sanction and advance of loans; the payment of certain grants and contributions towards street improvements; the acquisition of parks and open spaces, and clearance and housing schemes. On the other hand the

metropolitan borough councils may contribute towards the cost of street improvements and the acquisition of parks and open spaces by the County Council.

Secondly, there is a large field of duties, mainly but not entirely relating to Public Health, in which the L.C.C. may act on the default of a borough council. These concern, *inter alia*, the following: enforcement of sanitary conditions in factories and workshops; prevention of floods; removal of unauthorised sky-signs; enforcing epidemic regulations of the Minister of Health; regulation of offensive businesses; provision of mortuaries; suppression of sanitary nuisances; disposal of refuse; and smoke abatement.

Thirdly, there are two services as to which the statutes provide for arrangements by which a metropolitan borough council may act as the agents of the L.C.C. These are: the administration of the Shops Acts, 1912 to 1934 (i); and the enforcing of the regulations made by the Home Secretary under the Fabrics (Misdescription) Act, 1913 (j), prescribing a standard of non-inflammability for textile fabrics offered for sale. The use in these Acts of the term "agents" seems a little anomalous in these cases. The relation is, in fact, not different from that explained in the next paragraph.

Fourthly, the Council make bye-laws under certain general or local Acts, subject to the approval of the appropriate Minister, which are enforced by the metropolitan borough councils (k). [492]

The above categories cover the chief points of contact between the L.C.C. and the metropolitan borough councils, but a few others may be mentioned, such as, for example, the work in connection with the naming of streets and the numbering of houses in which the association is co-operative; the work in connection with tuberculosis and the notification of infectious disease, and certain electoral duties. It may be added that the Council are able to obtain the views of the borough councils as a whole through the Metropolitan Boroughs Standing Joint Committee, and that the Council frequently obtain parliamentary powers for one or more borough councils through the medium of one of their own General Powers Acts. [493]

(ii.) *City of London Corporation*.—The contact of the Council with the City of London Corporation is less close than with the metropolitan borough councils. The local government powers and duties of the City of London Corporation admit, from this point of view, of a threefold classification. There are, first, many of the powers of a county council: in this field the L.C.C. have no control. There are, secondly, most of the powers of a metropolitan borough council: in this field the County Council have in general the same controlling, co-ordinating or co-operating powers as with the borough councils. There are, thirdly, the powers peculiar to the corporation in which, again, the Council have no control. [494]

(iii.) *Outer-London Local Authorities*.—Contact of the L.C.C. with Outer-London local authorities occurs in various ways.

(A) The Council have various residential institutions outside the county boundary in connection with the public assistance service, the hospitals service, and the treatment of sick and defective children.

(i) 8 Halsbury's Statutes 613—620; 27 Halsbury's Statutes 226.

(j) 18 Halsbury's Statutes 951.

(k) See e.g. ss. 84 (3), 107 (3) and 139 (2) of the P.H. (London) Act, 1936; 11 Halsbury's Statutes 1034, 1040.

Sometimes the education of any children resident in these institutions is provided within the organisation of each institution; but where this is not so, education is provided by the local education authority of the area in which each institution is situated, and this involves financial and other relations between the L.C.C. and the local education authority of the outside area. [495]

(B) It frequently happens that children living just outside the county boundary are much better served, in respect of accessibility, by a school within London than by a school within their own area, and *vice versa*. In these cases various mutual arrangements subsist for the education of these border children. Arrangements are also made when parents move within or without the county, and it is desired not to break the continuity of a child's education at a particular school, and when an out-county child desires to receive further education at some school of the Council providing a type of education not obtainable in its own district. [496]

(C) There is a certain mutuality in the fire brigade and ambulance services under which, in emergencies, the London fire brigade and the London ambulance service, and the corresponding organisations of the Outer-London local authorities, operate across the county boundary. [497]

(D) The London main drainage system covers a wide area beyond the county boundary. Various districts have been added to the system under local Acts; and parts of other districts have been admitted into the system under agreements. The consideration for admission has usually involved the payment of a lump sum and a proportional part of the main drainage rate. [498]

(E) Questions of settlement and removability arise under the poor law between the L.C.C. and other public assistance authorities, but these much more commonly concern counties or county boroughs farther afield than the contiguous outer-London areas. [499]

Contact of the Council with Government Departments.—This aspect of the council's work is adequately dealt with under other titles. See the articles on the several Government departments and also title GOVERNMENT CONTROL. [500]

LONDON FIRE BRIGADE

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See also titles : FIRE PROTECTION ;
FIREMEN ;
HYDRANTS ;
LONDON BUILDING.

ORIGIN

The Metropolitan Fire Brigade Act, 1865 (a), placed upon the Metropolitan Board of Works the duty of extinguishing fires and protecting life and property in case of fire within London. By sect. 4, the Board were empowered to establish, maintain and suitably equip an efficient force of men to be known as the Metropolitan Fire Brigade. Sect. 6 of the Act transferred to the Board the stations and equipment of the fire engine establishment of the insurance companies, which, from 1832 to 1865, had been the principal fire-fighting organisation for the Metropolis, and allowed the Board to purchase the stations, fire engines and plant belonging to any parish, place or body of persons within their jurisdiction. Accordingly the manual fire engines and other equipment of such few parochial authorities as had provided them were taken over and, under sect. 11 of the Act, the fire escapes of the Royal Society for the Protection of Life from Fire were acquired on July 1, 1867. The Metropolitan Fire Brigade thus became the sole authority for fire protection in London. [501]

Under sect. 40 (8) of L.G.A., 1888 (b), the L.C.C. took over the functions of the Metropolitan Board of Works, including the fire brigade, and by sect. 46 of the L.C.C. (General Powers) Act, 1904 (c), the brigade was renamed the London Fire Brigade. [502]

(a) 11 Halsbury's Statutes 997.
(c) 11 Halsbury's Statutes 1259.

(b) 10 Halsbury's Statutes 719.

FIRES

Powers of Brigade and Police.—On the occasion of a fire, the chief officer or other officer in charge of the fire brigade may, under sect. 12 of the 1865 Act (*d*), take command of any volunteer fire brigade or other persons who voluntarily place themselves at his disposal. He may also remove, or order any fireman to remove, any persons who interfere by their presence with the operations of the brigade, and may generally take any measures that appear expedient for the protection of life and property, with power by himself or his men to break into or through, or take possession of, or pull down any premises for the purpose of putting an end to a fire, doing as little damage as possible. The officer may also, on any such occasion, cause the water to be shut off from the mains and pipes of any district in order to give a greater supply in the district where the fire has occurred. [503]

Sect. 12 also authorises the police to aid the fire brigade in the execution of their duties, and allows them to close any street in or near which a fire is burning and to remove any persons who interfere by their presence with the operations of the fire brigade. [504]

Assistance to London Salvage Corps.—The London Salvage Corps were established under sect. 29 of the Act (*e*), by the companies insuring property from fire within London. They are charged with the duty of attending at fires and saving insured property. An obligation is placed on the fire brigade to afford the necessary assistance to the Salvage Corps in the performance of their duties and upon the application of any officer of the Corps to hand over to their custody property saved from fire. [505]

Damage by Brigade.—By sect. 12 of the Act (*f*), any damage occasioned by the fire brigade in the due execution of their duties is deemed to be damage by fire within the meaning of any policy of insurance against fire. [506]

Fires in Chimneys and Ducts.—No charge is made by the brigade in respect of attendance at a fire within the Administrative County of London, but by sect. 60 of the L.C.C. (General Powers) Act, 1934 (*g*), if a fire occurs in a chimney, or in a duct used for carrying off smoke, vapour or fumes in connection with the cooking of food, and any part of the London Fire Brigade attend, the occupier is liable to pay towards the maintenance of the brigade a sum which varies in accordance with the rateable value of the premises but does not exceed £1 in the case of a chimney and £5 in the case of a duct. The provision regarding chimney fires replaced that in sect. 30 of the L.C.C. (General Powers) Act, 1900 (*h*). [507]

Fires Outside London.—The London Fire Brigade may, under sect. 30 of the Act of 1865 (*i*), attend fires occurring outside the area of the Administrative County of London and, in such cases, the owner and occupier of the property where the fire occurs are jointly and severally

(d) 11 Halsbury's Statutes 909.

(e) *Ibid.*, 999.

(f) 11 Halsbury's Statutes 1246.

(g) *Ibid.*, 1002.

(h) 27 Halsbury's Statutes 431.

(i) *Ibid.*, 1002.

liable to defray the expenses incurred by the brigade in attending the fire. The amount of the expenses and the propriety of the brigade's attendance may be summarily determined by two justices in cases of dispute. It is noteworthy that the section imposes the liability to defray expenses on the occupier as well as on the owner. [508]

By sect. 49 of the L.C.C. (General Powers) Act, 1936, the L.C.C. are allowed to enter into agreements with neighbouring local authorities to provide that no charge will be made by either party to any such agreement in respect of attendance at an out-of-area fire occurring within a reasonable distance of the boundary of London, unless a call to the fire is received from the local fire brigade. [509]

Special Services.—Sect. 30 of the Act of 1865 (*k*) allows the L.C.C. to permit any part of the fire brigade to be employed on special services upon such terms of remuneration as the Council may think just; and the brigade are frequently called to deal with accidents, through persons being pinned under vehicles, overcome in sewers or caught in lifts or machinery, and also to stop leakages of inflammable liquids and refrigerating gases. In practice no charge is made for services rendered by the brigade in dealing with such leakages of liquids or in attending to render humanitarian services. For other special services charges are made according to the services performed. [510]

Fire Alarms.—Fire alarms are provided by the Post Office under arrangements as to payment by the L.C.C. By sect. 61 of the L.C.C. (General Powers) Act, 1909 (*l*), any person giving a false alarm of fire to the London Fire Brigade or to any officer thereof is liable on summary conviction to a penalty not exceeding £25. [511]

Water Supply for Fires.—Under sect. 32 of the Act of 1865 as amended by sect. 34 of the Metropolis Water Act, 1871 (*m*), the Metropolitan Water Board must provide at the expense of the L.C.C. fire hydrants connected to their water mains. The Metropolitan Water Board are, however, under no statutory obligation to provide an adequate water supply for fire extinguishment. Sect. 32 of the 1865 Act also provides that the L.C.C. may put up a public notice on any house or building in some conspicuous place to indicate the situation of a fire hydrant. See title HYDRANTS. [512]

Finance.—Every insurance company insuring from fire property within London pays annually to the L.C.C. a sum at the rate of £35 per million pounds of the gross amount insured by the company in respect of property in the metropolis (*n*), and such contributions are deemed by sect. 14 of the Act of 1865 to be specialty debts due to the Council and recoverable accordingly. To ensure payment of these contributions in full, sects. 15 and 16 of the Act require each insurance company to make a return to the Council on June 1 of each year of such gross amount insured by them, a penalty of £5 per day being provided for every day that a company are in default, and sect. 17 gives an authorised officer of the Council the right to inspect, during hours of business, the books of the insurance companies.

(k) 11 Halsbury's Statutes 1002.

(l) *Ibid.*, 1311.

(m) 20 Halsbury's Statutes 236.

(n) Act of 1865, s. 15; 11 Halsbury's Statutes 1000.

A contribution of £10,000 per annum is made by the Treasury towards the expenses of the brigade (o). [513]

Personnel, Pay and Allowances.—Sects. 7 and 8 of the Act of 1865 (p) provided that the officers and men should be appointed and removed at pleasure, that such salaries should be paid as thought expedient, and that regulations might be made as to compensation to members of the brigade in case of accident or to their wives or families in case of death (q), as to superannuation, and as to gratuities for extraordinary services.

Scales of pay and annual increments have been prescribed. Basic pay for permanent firemen varies from 62s. a week to 98s. a week according to length of service. Other scales are laid down for pilots (89s. 4d. a week to 101s. 10d. a week) and officers (95s. a week to £650 a year). The chief officer and divisional officers and other principal officers have salaries ranging from £700 to £1,800 a year. Full pay is allowed during sickness, and special payments are made for special duty. Uniform is provided and replaced free. Quarters (or allowances in lieu) are provided for officers; sub-officers and men are given allowances in lieu of quarters and may live out, or may be allowed to occupy with their families apartments when available at fire stations, at economic rents. Sect. 22 of the Act of 1865 allows a police magistrate by warrant to order a constable to turn out a discharged officer or man from a house provided for him. Medical attendance for illness, etc., due to service is provided free. [514]

A deduction of $2\frac{1}{2}$ per cent. towards pension is made from pay; pensions and gratuities on retirement are paid according to years of service up to twenty-eight years, when the pension reaches the maximum, i.e. two-thirds of the pay. Emoluments are reckoned for pension in the case of officers.

The Fire Brigade Pensions Act, 1925 (r), only applies to the London Fire Brigade as regards service in two brigades, i.e., on the removal of a fireman to or from the London Fire Brigade (sect. 24 (1)). [515]

Recruitment, Training and Discipline.—The Council may make bye-laws regulating the training, discipline and good conduct of the Fire Brigade under sect. 9 of the Act of 1865 (s). By the Council's regulations candidates must be between nineteen and thirty-one years of age and of specified height and chest measurement, and must either have served in the Great War or be of British nationality. They are engaged on probation for one year. Service in the brigade is a whole-time employment. Training is provided by drill, classes and examinations for promotion. Numerous regulations have been made as to conduct and discipline. Offences are dealt with by superintendents and higher ranks, subject to investigation by the Chief Officer, who may suspend members of the brigade. Dismissal is dealt with by the Council through the appropriate committee.

(o) Act of 1865, s. 18; 11 Halsbury's Statutes 1001.

(p) 11 Halsbury's Statutes 998, 999.

(q) Similar compensation in respect of any employee (including fire brigade staff) may be paid under the L.C.C. (General Powers) Act, 1895, s. 44; 11 Halsbury's Statutes 1219.

(r) See ss. 7, 8 (2) (3), 24 (1); 13 Halsbury's Statutes 1098, 1099, 1108.

(s) 11 Halsbury's Statutes 999.

The authorised strength of the brigade at June 30, 1936, was :

- 1 Chief Officer.
- 1 Deputy Chief Officer.
- 1 Divisional Officer.
- 3 Assistant Divisional Officers.
- 1 Senior Superintendent.
- 7 Superintendents.
- 13 District Officers.
- 71 Station Officers.
- 203 Sub-Officers.
- 1630 Firemen (including men on probation and in training).
- 13 Pilots.
- 33 Watchroom attendants.

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[516]

The firemen and sub-officers of the brigade are organised on a two-shift system. Full hours of duty are nine during day-shift and fifteen during night-shift, the watches changing at 9 a.m. and 6 p.m. The two watches change over from day- to night-shift at week-ends, when a double shift is worked to effect the change. On the day-shift about half the time is allocated as "working hours," *i.e.* for cleaning, testing, etc., and during night-shift the working hours are much shorter, and the men are allowed to sleep in uniform near at hand. [517]

Retirement.—Members may resign on due notice. Penalties are imposed (but may be waived) for resignation within the first two years or during special periods of instruction. Men who have not reached the rank of station officer may retire at forty-seven, and after that age may be required to retire at any time. Retirement (with appropriate pension) may be required in the case of infirmity, injury or ill-health.

A committee has been set up representative of the station officers to consider and make representations on matters affecting their service ; a collective body representative of men below the rank of station officer exists for a similar purpose. [518]

Fire Engines and Road Traffic.—The position is similar to that of the fire brigade services of other authorities. See title FIRE PROTECTION at Vol. VI., pp. 88—89. [519]

FIRE PREVENTION IN BUILDINGS

Power to require means of escape in case of fire and protective structural precautions against fire in certain buildings is conferred upon the L.C.C. by Part VIII. of the London Building Act, 1930; see title LONDON BUILDING, *ante*, at pp. 192—198. Requirements in regard to special classes of buildings are made by the Council in the following cases :

(1) Cinemas and premises where celluloid films are made or stored ; see title CINEMATOGRAPHS at Vol. III., pp. 172, 173.

(2) Theatres and buildings of entertainment (Metropolis Management and Building Acts Amendment Act, 1878 (*t*), sects. 12, 21 ; Metropolitan Board of Works (Various Powers) Act, 1882, sect. 45 (*u*) ;

(*t*) 19 Halsbury's Statutes 341—346.

(*u*) *Ibid.*, 347.

L.C.C. (General Powers) Act, 1935, Part VI. (w)—see title THEATRES.

(3) Premises used for public boxing (L.C.C. (General Powers) Acts, 1930, Part III. (a), and 1935, Part VI.).

Powers under sects. 14, 15 of the Factory and Workshop Act, 1901 (b), as to means of escape in case of fire, and bye-laws for that purpose are, by virtue of sect. 153 of the Act (c), exercised in London by the L.C.C. See also title FLATS as to bye-laws dealing with means of escape in tenement buildings. [520]

Inspections of Places of Public Entertainment.—One district officer and ten station officers chosen from the uniformed ranks of the brigade act as inspectors of places of public entertainment. They work under the supervision of a superintendent, who also makes a number of similar inspections.

These inspections are made (1) during entertainments, to ascertain whether the rules of management and other conditions annexed to the licences granted by the Council are complied with, and (2) in the absence of the public, to test scenery, curtains, etc., as to their non-inflammability and to verify that safety devices are in efficient working order. [521]

Inspections of Warehouses, Stores, etc.—Brigade officers (acting under the direction of senior officers) carry out an annual inspection of the fire-protective equipment provided under sect. 81 of the London Building Act, 1930 (d), at large warehouses, departmental stores and garages; see title LONDON BUILDING, *ante*, pp. 189, 190. [522]

Inspections of Tube Railways, Government Buildings, etc.—Brigade officers also carry out, by arrangement with the M. of T., an annual inspection of the fire-protective equipment provided at tube railway stations and, by arrangement with H.M. Office of Works, a similar inspection is made of most of the Government offices, and of national buildings such as the British Museum, Westminster Abbey, St. Paul's Cathedral, the Palace of Westminster, Woolwich Arsenal, etc. [523]

(w) 23 Halsbury's Statutes 137.

(b) 8 Halsbury's Statutes 525—527.

(d) 28 Halsbury's Statutes 201.

(a) 23 Halsbury's Statutes 740.

(c) *Ibid.*, 507.

LONDON PASSENGER TRANSPORT

See LONDON ROADS AND TRAFFIC.

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See also titles :

ASSESSMENT FOR RATES ;
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 VALUATION LIST ;
 VALUATIONS FOR RATING.

INTRODUCTION

The principles underlying the system of rating in London do not differ from those in the rest of England and Wales. The system by which occupiers are rated on the basis of the annual value of the property occupied is founded on the Statute of Elizabeth (a), and the differences which have arisen between London and the rest of the country have for the most part been due rather to the accident of legislative opportunities than to any declared intention to differentiate permanently between the two areas.

The recent trend of legislation has clearly been in the direction of securing greater uniformity between London and the rest of England and Wales. Thus the system of a complete revaluation every five years, which had been a special feature of the London valuation system since 1869 (b), was applied to the rest of England and Wales by the Rating and Valuation Act, 1925 (c). The purpose of the Government

(a) Poor Relief Act, 1601 ; 14 Halsbury's Statutes 477.

(b) Valuation (Metropolis) Act, 1869 ; *ibid.*, 552.

(c) 14 Halsbury's Statutes 617.

went much further than this, since the Rating and Valuation Bill, 1925, as introduced into Parliament, would have secured an almost complete assimilation of the rating system throughout the country. During its passage through Parliament, however, the Bill was amended and London was excluded for the time being. Some of the sections of the Act of 1925 were applied to London by the R. & V. (Apportionment) Act, 1928 (*d*), while the R. & V.A., 1928 (*e*), the L.G.A., 1929 (*f*), the Railways (Valuation for Rating) Act, 1930 (*g*), and the Finance Act, 1930 (*h*), appear to be clear indications of a tendency to bring the London rating system into line with the revised system of the rest of the country. That this is the intention of the Government is evident from the undertakings given by the Minister of Health when the Rating and Valuation Bill, 1925 (*i*), and the Valuation (Metropolis) Amendment Bill, 1933 (*k*), were under consideration by the House of Commons. In the meantime there are numerous differences in rating procedure as between London and the rest of England and Wales, and even where the procedure is similar it is sometimes governed by different legislation. [524]

AUTHORITIES AND AREAS

Rating Authorities.—Sect. 7 (2) of the R. & V. (Apportionment) Act, 1928 (*l*), provides that in any subsequent Act in relation to London the expression "rating authority" means each of the twenty-eight metropolitan borough councils, the Common Council of the City of London, the sub-treasurer of the Inner Temple and the under treasurer of the Middle Temple (thirty-one in all). The expression "rating area" is defined as meaning the area of a rating authority. According to the definition the metropolitan borough council is the rating authority "as respects any parish in the borough," but the parishes in those metropolitan boroughs which in 1928 contained more than one parish have since been united and the rating areas and the parish areas are identical throughout London. The Act of 1928 appears to leave the same authorities their position of "overseers." Under sect. 11 (1) of the London Government Act, 1899 (*m*), each of the twenty-eight newly created metropolitan borough councils became the overseers of every parish within their borough (*n*) and by sect. 11 of the City of London (Union of Parishes) Act, 1907 (*o*), the Common Council became the overseers of the united parish of the City of London. The position of the Inner and Middle Temples was not affected by these Acts, the Temples being outside the Act of 1899 (*p*) and not included in the schedule to the Act of 1907 (*q*).

The duties of the rating authorities (or overseers) include the preparation of the valuation lists, the making and collection of the rate

- (*d*) S. 7; 14 Halsbury's Statutes 723.
- (*e*) S. 1; *ibid.*, 708.
- (*f*) 10 Halsbury's Statutes 883.
- (*g*) 23 Halsbury's Statutes 455.
- (*h*) S. 81; 23 Halsbury's Statutes 145.
- (*i*) See L.C.C. Minutes, November 17, 1925, p. 737.
- (*k*) See Parliamentary Debates, 1933 (Valuation (Metropolis) Amendment Bill), and Vol. 298, col. 50 (answer to q. 41, March 4, 1935).
- (*l*) 14 Halsbury's Statutes 723.
- (*m*) 11 Halsbury's Statutes 1232.
- (*n*) Cf. s. 7 (2) of the 1928 Act; 14 Halsbury's Statutes 723, with the wider s. 62 of the R. & V.A., 1925; 14 Halsbury's Statutes 682.
- (*o*) 14 Halsbury's Statutes 603.
- (*p*) S. 22; 11 Halsbury's Statutes 1237.
- (*q*) 14 Halsbury's Statutes 613.

and questions relating to rating of owners and compounding for rates, etc. In practice the duties are performed by rating and valuation committees. The duty of valuing railway hereditaments and the railway, tramway and trolley-bus hereditaments of the London Passenger Transport Board is now transferred to the Railway Assessment Authority (*r*). [525]

Assessment Committees.—The London Assessment Committee (twenty-nine in number) are now appointed under para. (h) of sect. 18 of the L.G.A., 1929 (*s*), one for the City of London, including the Inner and Middle Temples, and one for each of the twenty-eight metropolitan boroughs. In nineteen cases (including the City) (*t*) these were the existing assessment areas, but in six cases (comprising ten boroughs) the former assessment areas were the areas of poor law unions comprising more than the whole of a borough.

The assessment committee of a metropolitan borough consists of such number of members of the borough council as the council think fit, together with one person (or substitute) appointed by the L.C.C. (*a*). Neither the person nor the substitute may be an officer of the L.C.C.

The assessment committee for the City of London, the Inner Temple and the Middle Temple, consists of such number of members of the Common Council as the Common Council think fit. The provision for the addition of a person appointed by the L.C.C. does not extend to the City of London assessment committee. [526]

No person who is a member of the committee responsible for the preparation of the valuation list may be a member of the assessment committee (*b*).

In London the assessment areas are the same as the rating areas, except that the City of London assessment area includes the Inner and Middle Temples. The system differs from that in operation in other counties, where the assessment area generally comprises several rating areas.

The duty of the assessment committees is to revise the valuation lists, subject to appeal to special sessions of justices and/or to assessment sessions (London quarter sessions), for the whole of London, including the City. (See title ASSESSMENT COMMITTEE.) As regards railway, tramway and trolley-bus hereditaments, the assessment committee's duty is to make such amendments of the valuation list as are necessary to make it conform with the particulars appearing in the valuation rolls when finally revised by the Railway Assessment Authority. Consequential alterations of totals must be made and do not require an appeal against totals. [527]

Railway Assessment Authority.—London is included with the rest of England and Wales within the area of administration of the Railway Assessment Authority as regards the valuation of railway hereditaments (*c*), and is concerned in the appointment of the authority, which consists of a chairman appointed by the Lord Chancellor and nine members, namely, three members appointed by the Minister of

(*r*) Railways (Valuation for Rating) Act, 1930; 23 Halsbury's Statutes 455; London Passenger Transport (Valuation for Rating) Order, 1935 (dated June 5th, 1935); see pp. 240—241, *infra*.

(*s*) 10 Halsbury's Statutes 895.

(*t*) City of London (Union of Parishes) Act, 1907, s. 14; 14 Halsbury's Statutes 605.

(*a*) L.G.A., 1929, s. 18 (*h*); 10 Halsbury's Statutes 895.

(*b*) *Ibid.*, s. 18 (*h*), proviso (*i*).

(*c*) Railways (Valuation for Rating) Act, 1930; 23 Halsbury's Statutes 455.

Health, one by the L.C.C., one by the Metropolitan Boroughs Standing Joint Committee, and one by each of the four Associations (County Councils, Municipal Corporations, Urban District Councils and Rural District Councils) (*d*).

The duty of the Railway Assessment Authority is to value, as from April, 1931, the railway hereditaments of the four amalgamated companies throughout England and Wales, and also to value as from April, 1936, the railway, tramway and trolley-bus hereditaments of the London Passenger Transport Board (*dd*). The valuations are subject only to appeal to the Railway and Canal Commissioners and the House of Lords. (See titles RAILWAYS, RATING OF; RATING APPEALS.) [528]

L.C.C.—The powers of the L.C.C. in regard to rating and valuation include the following :

- (1) The issue of precepts to the rating authorities for the payment of contributions from the local rate (*e*), and the publication of the statutory list of totals of the valuation lists (*f*).
- (2) The appointment of a member of the assessment committee of each metropolitan borough (but not of the City of London Assessment Committee) and a substitute member (*g*).
- (3) The exercise in London of the powers which, outside London, a county valuation committee exercise under the Railways (Valuation for Rating) Act, 1930 (*h*), and the London Passenger Transport (Valuation for Rating) Order, 1935. The Council are, therefore, the only London authority entitled to make representations on the amount proposed to be taken by the Railway Assessment Authority as the net receipts of an undertaking, or on the net annual value of the undertaking as a whole (*i*). Equally with the rating authority, the Council may make representations as regards the treatment of premises as being or as not being a railway, tramway or trolley-bus hereditament, or as regards the value of any such hereditament (*k*).
- (4) The Council may demand from the rating authorities copies of documents and information relating to rating matters required for statistical purposes (*l*), and may obtain from the inspector of taxes copies of schedule A tax assessments on payment of a sum not exceeding 5s. per hundred (*m*). [529]

As a ratepayer in the City of London and every metropolitan borough, the Council have a ratepayer's right of objection to the valuation lists as regards the assessment of their own or other ratepayers' properties (*n*).

(*d*) Railways (Valuation for Rating) Act, 1930, s. 2; 23 Halsbury's Statutes 456.
(*dd*) London Passenger Transport (Valuation for Rating) Order, 1935.

(*e*) London Government Act, 1899, s. 11 (2); 11 Halsbury's Statutes 1232.

(*f*) Valuation (Metropolis) Act, 1869, s. 17; 14 Halsbury's Statutes 557; L.G.A., 1888, s. 44; 10 Halsbury's Statutes 724.

(*g*) L.G.A., 1920, s. 18 (*h*); 10 Halsbury's Statutes 895.

(*h*) Railways (Valuation for Rating) Act, 1930, s. 23 (2); 23 Halsbury's Statutes 478.

(*i*) Third Schedule, para. 6 (*a*); *ibid.*, 482.

(*k*) Para. 6 (*b*); *ibid.*

(*l*) L.C.C. (General Powers) Act, 1893, s. 14; 11 Halsbury's Statutes 1115.

(*m*) Finance Act, 1930, s. 32 (4); 23 Halsbury's Statutes 146.

(*n*) Westminster Assessment Committee, London Q. S. (1906), reported in 1 Konstant 10.

The Council have, prior to each quinquennial valuation since 1890, convened an assessment conference of London rating and assessment authorities with a view to securing a greater measure of uniformity of assessment practice throughout London. The resolutions of the conferences are published. [580]

RATES AND PRECEPTS

General Rate.—In London the general rate in its present form was established by sects. 10, 11 of the London Government Act, 1899 (*o*), and the London (Rating) Scheme, 1901 (*p*), which provided that the general rate and the poor rate were to be levied together as one rate, termed the general rate, and that all enactments applying to the poor rate should be construed as applying to the general rate. It was also provided that all the expenses of a metropolitan borough council (including sums demanded by precept served on the borough council) should be paid out of the general rate and that the separate sewers rate and separate lighting rate should be discontinued. [581]

Differential Rates.—Under the London Government Act, 1899, while 17 of the boroughs were single parishes with a uniform rate throughout the borough, in the other 11 boroughs there were 50 parishes each of which was a separate rating unit with different rates. Since that date, however, all the separate parishes within metropolitan boroughs have been united either by schemes under the London Government Act, 1899 (*q*), or by orders confirmed by the M. of H. under sect. 57 of the L.G.A., 1888 (*r*), or in the case of the City of Westminster, by a local Act (*s*), or, finally, in the case of Holborn Parish, Gray's Inn and Lincoln's Inn were added under the L.C.C. (General Powers) Act, 1931, Part V. (*t*). The 112 parishes in the City of London were united by a local Act in 1907 (*u*). In some boroughs, differential rating was continued as between the old parish areas for limited periods, all of which have now expired. The only borough where differentiation continues for an unlimited period is Southwark, where certain revenues from estates and markets respectively go in relief of the rates of two of the former parishes (*a*). The present position is that with this one exception and apart from special rates, there is no differential rating within any rating area in London. [582]

Special Rates.—In certain areas ecclesiastical, garden, estate and other special rates under local Acts are levied, in some cases by the borough council as an additional item of the general rate (*b*), in others as separate rates by churchwardens, estate commissioners, etc. In "London Statistics," (*c*) published yearly by the L.C.C., a list is given of these special rates with the areas of charge, the authority responsible for the levy and collection of the rate, the amounts in the pound levied, and references to the Acts authorising them. [583]

(o) 11 Halsbury's Statutes 1231, 1232.

(p) S.R. & O., Rev., 1904, Vol. VIII., 84.

(q) London Government Act, 1899, s. 16 (1) (*e*); 11 Halsbury's Statutes 1234.

(r) 10 Halsbury's Statutes 732.

(s) Westminster City Council (General Powers) Act, 1921.

(t) 24 Halsbury's Statutes 273.

(u) City of London (Union of Parishes) Act, 1907; 14 Halsbury's Statutes 509.

(a) London (Southwark) Confirmation Order, 1930, No. 74, 155.

(b) London Government Act, 1899, s. 10 (4); 11 Halsbury's Statutes 1231.

(c) E.g. Vol. XXXVIII., pp. 396—397.

Rates in City of London.—Instead of one general rate there are in the City of London two rates (*d*), the poor rate (from which the precepts of the L.C.C. are payable) and the general rate which embodies the old sewers rate, consolidated rate, police rate, trophy tax and ward rate (*e*). The trophy tax is a precept rate issued by H.M. Lieutenants for the City of London for defraying the cost of the militia under the Militia (City of London) Act, 1820 (*f*). See p. 193 of Vol. III.

Limits on the amount in the pound of the rate, originally fixed by the City of London Police Act, 1839, and the City of London Sewers Act, 1848, were retained by sect. 15 (1) of the Act of 1907, but were varied as regards Police in 1919 and all the limits were removed in 1920 (*g*).

The general rate, like the rates which it superseded, is levied to the extent of one-half on unoccupied properties in the City of London (*h*). The division of services between the poor rate and the general rate is set out in the annual volume of "London Statistics" (*i*).

The metropolitan police rate and the special county rate of the L.C.C. are not levied upon the City. The City maintains its own police force and administers those services which outside the City are charged to the special county rate. See title POLICE, CITY OF LONDON. [584]

Precepts and Rates.—Included in the general rate (*k*) are the requirements of the bodies authorised to issue precepts either through the L.C.C. or directly on the rating authority.

The Railway Assessment Authority issue precepts on the L.C.C. based on the relative net annual values of freight transport undertakings occupied by railway companies within the several counties and county boroughs in England and Wales. When the railway valuation roll has been completed, the basis of apportionment will be the net annual values of the railway hereditaments in the several counties and county boroughs. The authority also issue precepts on the L.C.C. based on the relative net annual values of the London Passenger Transport Board's hereditaments within the several counties and county boroughs in the Board's area. The sums demanded are payable as general county expenses (*l*). [585]

The Lee Conservancy Catchment Board (*m*), whose area includes Hackney, Stoke Newington and part of Poplar, issues precepts to the L.C.C. (*n*). The basis of apportionment is the aggregate of the rateable values of the hereditaments within the several areas on the first day of the financial year, agricultural land being exempted. The sums demanded may be charged either on the areas concerned as the L.C.C. think fit, or on the whole county (*o*). They are, in fact, charged on the whole county as general county expenses (*p*). [586]

(*d*) City of London (Union of Parishes) Act, 1907, s. 19; 14 Halsbury's Statutes 607.

(*e*) S. 15 (1); *ibid.*, 605.

(*f*) 11 Halsbury's Statutes 877.

(*g*) City of London (Various Powers) Act, 1920, s. 16.

(*h*) See "Unoccupied Properties," *post*, pp. 246–247.

(*i*) *E.g.* Vol. XXXVIII., pp. 394, 395.

(*k*) Poor Rate and General Rate in the City.

(*l*) Railways (Valuation for Rating) Act, 1930, ss. 2 (8), 18, Second Schedule, Part II., paras. 2–3, and Apportionment Scheme; 23 Halsbury's Statutes 457, 473, 480; London Passenger Transport (Valuation for Rating) Order, 1935.

(*m*) See Vol. II., p. 460, and *ante*, p. 38.

(*n*) Land Drainage Act, 1890, s. 20; 23 Halsbury's Statutes 542.

(*o*) S. 23; *ibid.*, 543.

(*p*) L.C.C. Minutes, May 19, 1981.

The L.C.C. issue precepts to the rating authorities for contributions for general county purposes and for special county purposes, the latter being levied on the county excluding the City of London, the Inner Temple and the Middle Temple. The precepts are based on the statutory totals (*g*) but also cover the adjustments of rates under sect. 100 of the L.G.A., 1929 (*r*), whereby amounts are debited or credited to the several separately rated areas (*s*), the purpose being the adjustment over a period of nineteen years in respect of the decreases or increases in poundage due to the operation of the Act. The form of precept is prescribed by the M. of H. (*t*). [537]

Precepts for the metropolitan police rate are issued to the metropolitan borough councils (*u*). They are based on the statutory totals in London (*a*) and on the total of the rateable values of the several parishes in the metropolitan police district outside London. The City has its own police force. [538]

The Metropolitan Water Board have power to issue precepts to the rating authorities for a deficiency rate if necessary (*b*). The basis of apportionment is the total annual value of the property supplied with water by the board in each borough (and not the statutory totals) but the sums required are included in the general rate and levied on all hereditaments in the borough (*b*). Deficiency rates were levied in the years 1913-14 to 1922-23, but since the revision of the scale of water charges under the Water Board's Act of 1921 (*c*) no deficiency rate has been necessary. [539]

The precept system in London differs from that which was applied to other county councils in the rest of England and Wales by sect. 9 of the R. & V.A., 1925 (*d*). In London the precepts of the L.C.C. are based not on the produce of a rate in each parish, but on the totals of the valuation lists. The effect of this is that a county rate levied on the parishes as a uniform rate in the pound becomes a varying rate when demanded from the ratepayers of each parish. The difference is due mainly to the following causes: (1) the cost of rate collection and losses in collection due to empties, allowances to owners, etc., are parish charges; and (2) provisional valuation lists, which are made from time to time as required, do not affect the totals of the quinquennial lists and of the supplemental lists which come into force annually on April 6, on which precepts are based.

The last-mentioned factor causes wide variations as between one rating area and another owing to the fact that where there is a new or varied assessment by a provisional list, the increase or reduction of rates (whether for central or local purposes) is enjoyed or borne locally between the date of the provisional list and the date when the supplemental list (or quinquennial list) in which the altered assessment appears comes into force—between one and two years later. The differentiation may, therefore, in some cases affect the rates for two years. [540]

In some instances there is a net reduction of assessments by

(*g*) Valuation (Metropolis) Act, 1869, s. 45; 14 Halsbury's Statutes 569.

(*r*) S. 100 and Fifth Schedule; 10 Halsbury's Statutes 945, 985.

(*s*) Calculated for the rating areas and the areas in which differential rates were levied in 1930. Now only levied differentially in Southwark.

(*t*) L.C.C. Precept Order, 1930; S.R. & O., 1930, No. 119.

(*u*) London Government Act, 1899, s. 11 (2); 11 Halsbury's Statutes 1232.

(*a*) Valuation (Metropolis) Act, 1869, s. 45; 14 Halsbury's Statutes 569.

(*b*) Metropolitan Water Act, 1902, s. 15 (2); 20 Halsbury's Statutes 264.

(*c*) Metropolitan Water Board (Charges) Act, 1921; *ibid.*, 202.

(*d*) 14 Halsbury's Statutes 627.

provisional lists in a rating area, but usually there is a net increase, and occasionally the increases are so great that the increased rates on the hereditaments concerned are greater than the total cost of and losses in collection of rates on all hereditaments in the rating area, with the result that the produce of a penny rate locally is greater than the produce of a penny rate on the statutory rateable value. In 1934-35, the county rate was 73-5*d.* on the statutory rateable value; locally it averaged 77-11*d.*, ranging from 73-12*d.* to 81-21*d.* (e). Stated in the form of the local rate required to produce 1*d.* in the £ on the statutory rateable value, the range in 1933-34 was from 0-0982*d.* to 1-099*d.*, that is to say, from 1-8 per cent. below to 9-9 per cent. above, or an average of 5-0 per cent. above the precept rate (f). [541]

Equalisation of Rates.—Until the year 1930-31 two equalisation funds were a special feature of the London rating system. The metropolitan common poor fund which was established in 1867 (g), and extended in its scope in 1921 (h), was administered by the M. of H. The equalisation fund which was established by the London (Equalisation of Rates) Act, 1894 (i), was administered by the L.C.C. Both funds were abolished by the L.G.A., 1929 (k).

The gross contributions, representing the local expenditure borne centrally by means of the metropolitan common poor fund in 1929-30, was 24-00*d.* in the £ and by the equalisation fund a standard 6*d.* in the £. Including these amounts, the total precept rates of central authorities formed 74-07 per cent. of the total rates in 1929-30. In 1930-31, the first year after the abolition of the two funds, the total precept rates of central authorities formed 74-49 per cent. of the total rates (71-58 per cent. in 1934-35).

The operation of the two funds was described in the annual volumes of "London Statistics" up to Vol. XXXIV. in the section "Centralisation of Local Expenditure" (l). [542]

Exemptions and Partial Exemptions from Rates.—Exemptions and partial exemptions existing prior to the London Government Act, 1899, were continued by sect. 10 (1) (m) and the London Rating Scheme, 1901 (n), made provision for protecting the interests of owners and occupiers of any hereditament which was exempt from any rate or liable to be assessed thereto at a less amount than other hereditaments.

Agricultural land which at that time enjoyed an exemption from three-fourths of the sewers rate, from two-thirds of the lighting and library rates and from one-half of all other rates, and which subsequently was exempted by the Agricultural Rates Act, 1923, from three-fourths of all rates, is now wholly exempt under the L.G.A., 1929, and is omitted

(e) L.C.C. return "Rates Made," 1934-35; "London Statistics," Vol. XXXVIII., pp. 390-394.

(f) Return "Rate Collection Leakages," 1933-34 (L.C.C.); "London Statistics," Vol. XXXVII., p. 437 (1932-33).

(g) Metropolitan Poor Act, 1867, ss. 61-72; Poor Law Act, 1927, ss. 194-202.

(h) Local Authorities (Financial Provisions) Act, 1921, s. 1; 11 Halsbury's Statutes 1842; repealed by L.G.A., 1929.

(i) 57 & 58 Vict. c. 53. Repealed by the L.G.A., 1929.

(k) Ss. 98 (4), 137 and Sched. XII.; 10 Halsbury's Statutes 945, 974, 1011.

(l) See Vol. XXXIV., pp. 439-445.

(m) 11 Halsbury's Statutes 1231.

(n) London (Rating) Scheme, 1901, Art. 2; S.R. & O., Rev. 1904, Vol. VIII., p. 84.

from the valuation list in London as in the rest of England and Wales (o). [543]

The only portion of London in which the partial exemption under sect. 211 of the P.H.A., 1875 (p), operates is the old parish of Woolwich. Until the passing of the London Government Act, 1899, the area was administered by the Woolwich local board, which was established under the P.H.A., 1848. At the time of the passing of the Act of 1899, that board levied a general district rate from which tithes, land used as a railway or canal, and land covered with water, were exempt to the extent of three-fourths (q). Under the Act of 1899 the area became part of the metropolitan borough of Woolwich and the exemption has been continued in the old parish area (r). [544]

The exemptions under the general law apply to London as to the rest of England and Wales including property in the occupation of the Crown as not being mentioned in the Act of Elizabeth (s); places of worship (t); burial grounds (partial exemption) (u); non-provided schools (a); Sunday and ragged schools (optional) (b); territorial drill-halls (c); and scientific, literary and fine arts societies (d).

Apart from these, there were formerly certain individual properties in London which were partially exempt from rates by a local Act. The most important (if not all) of these exemptions have now been removed including those relating to foreshore properties near Blackfriars Bridge (e), the Old Custom House (f), and St. Luke's workhouse (g). [545]

Unoccupied Properties.—Generally in London, as in the rest of England and Wales, rates are not collected where hereditaments are unoccupied, there being no occupier to rate. In the City of London, however, one-half of the general rate (not the poor rate) (h) is charged on an unoccupied building and is payable "by the owner or by the first tenant or occupier thereof," who is authorised to deduct it out of his rent (i). The definition of "owner" includes the person receiving or

(o) L.G.A., 1929, s. 67 (2); 10 Halsbury's Statutes 928.

(p) 13 Halsbury's Statutes 714.

(q) P.H.A., 1875, s. 211; 13 Halsbury's Statutes 714.

(r) London (Rating) Scheme, 1901, art. 2, and see *London and India Docks Co. v. Woolwich Borough Council*, [1902] 1 K. B. 750; 38 Digest 474, 346; and *Port of London Authority v. Woolwich Corp.*, [1924] A. C. 930; 38 Digest 474, 347. The second case shows that a new dock constructed since April 1, 1901, does not enjoy the exemption.

(s) Poor Relief Act, 1601; 14 Halsbury's Statutes 477.

(t) Poor Rate Exemption Act, 1838, s. 1; *ibid.*, 500.

(u) Burial Act, 1855, s. 15; 2 Halsbury's Statutes 223, but see *North Manchester Overseers v. Winstanley*, [1908] 1 K. B. 835; 38 Digest 452, 189.

(a) Education Act, 1921, s. 167; 7 Halsbury's Statutes 211.

(b) Sunday and Ragged Schools (Exemption from Rating) Act, 1869; 14 Halsbury's Statutes 545.

(c) R. & V.A., 1925, s. 64 (3); *ibid.*, 684. See also *Pearson v. Holborn Union Assessment Committee*, [1908] 1 Q. B. 389; 38 Digest 486, 444; *Rayner v. Drewitt* (1900), 82 L. T. 718; 38 Digest 486, 445; and *Derbyshire Territorial Army Association v. S.E. Derbyshire Assessment Committee* (1935), 99 J. P. 260; Digest (Supp.).

(d) Scientific Societies Act, 1843, s. 1; 10 Halsbury's Statutes 477.

(e) Corporation of London (Rating of Reclaimed Lands) Act, 1920.

(f) L.C.C. (General Powers) Act, 1930, ss. 56, 57; 23 Halsbury's Statutes 361, 362.

(g) L.C.C. (General Powers) Act, 1932, ss. 15, 16; 25 Halsbury's Statutes 539, 540.

(h) City of London (Union of Parishes) Act, 1907, s. 15 (1); 14 Halsbury's Statutes 605.

(i) City of London Sewers Act, 1848, s. 177.

claiming to be entitled to receive the rent (*k*). The general rate amounted in 1934-35 to 2s. 1d. out of a total poor rate and general rate of 8s. 8d. (*l*). [546]

RATING PROCEDURE

The Person Rated.—Generally the occupier is rated (*m*) and in no case is there a division of the rates between the occupier and the owner of a hereditament. There are, however, certain special instances where the owner is rated, namely:

- (1) the owner of tithe rentcharge (*n*);
- (2) the owner of houses wholly let out in lodgings (*o*);
- (3) the owner of properties of small value where the rating authority has made an order under sect. 4 of the Poor Rate Assessment and Collection Act, 1869 (*p*);
- (4) the owner of land occupied for advertising stations (*q*);
- (5) in the City of London the owner of unoccupied property is liable for one-half of the general rate (but not the poor rate) (*r*).

The owner may become liable to bear the rate in the following cases:

- (A) under sect. 1 of the Act of 1869 already mentioned whereby the occupier of a property of whatever value let to him for a term not exceeding three months is entitled to deduct the amount of any rates paid by him from the rent due or accruing due to the owner;
- (B) where the owner of property of small value has agreed with the metropolitan borough council under sect. 3 of the Act of 1869 that he will pay rates in lieu of the occupier whether the property is occupied or not; and
- (C) where the owner of blocks of flats and offices and other property let at an inclusive rental arranges with the borough council to pay the demand notes instead of the occupier.

In these cases the liability of the owner does not relieve the occupier of contingent liability. [547]

The Hereditament Rated.—In London, as in the rest of England and Wales, rates are payable in respect of the occupation of lands (*s*), lands being interpreted in the widest sense as including not only the surface but everything attached to it, whether above or beneath the surface. [548]

Making of Rate and form of Rate Book.—The form of rate book and rate collection account is prescribed by an order made in 1901 (*t*),

- (*k*) City of London Sewers Act, 1848, s. 181.
- (*l*) "London Statistics," Vol. XXXVIII, p. 395.
- (*m*) Poor Relief Act, 1601, s. 1; 14 Halsbury's Statutes 477.
- (*n*) Tithe Act, 1801, s. 6; 10 Halsbury's Statutes 570. Under the Tithe Act, 1936, tithe rentcharge is extinguished as from October, 1936, and is thereafter deemed to have no rateable value. Rating authorities receive compensation diminishing according to a formula.
- (*o*) Representation of the People Act, 1867, s. 7; 7 Halsbury's Statutes 404.
- (*p*) 14 Halsbury's Statutes 547.
- (*q*) Advertising Stations (Rating) Act, 1889; 14 Halsbury's Statutes 597.
- (*r*) City of London Police Act, 1839; City of London Sewers Act, 1848, as extended by City of London Sewers Act, 1851, s. 51, and applied to the general rate by City of London (Union of Parishes) Act, 1907, s. 15; 14 Halsbury's Statutes 605. See also *ante*, p. 246.
- (*s*) Poor Relief Act, 1601, s. 1; 14 Halsbury's Statutes 477.
- (*t*) London (Rate Collection) Accounts Order, 1901; S.R. & O., Rev. 1904, Vol. VIII, p. 88.

but the M. of H. may prescribe a new form (*u*). The rate estimates are submitted to the borough council by the finance committee (*a*). The provision in the Act of 1899 (*b*) for dividing expenses between the parishes in a borough in proportion to their rateable values no longer applies since no metropolitan borough now comprises more than one parish. The rate if made for a period exceeding three months may be made payable by instalments, each instalment only being enforceable when it falls due (*c*). The title to the rate must set out the period, but a new rate may be made during the period if the necessities of the parish so require (*d*).

When the rate book is completed the town clerk signs a declaration in the words prescribed by the order of 1901 (*e*), which supersedes the declaration required to be made by overseers by the Fourth Schedule to the Valuation (Metropolis) Act, 1869 (*f*). In some boroughs the rate is signed by members of the borough council and bears the seal of the council, but this is not necessary (*d*). [549]

Period of Rate.—The practice in London varies. Rates for 1934–35 were made for the year and collected in half-yearly instalments in four boroughs (Fulham, Hampstead, St. Marylebone and Woolwich); rates were made for the year and collected in quarterly instalments in thirteen boroughs (Battersea, Bermondsey, Camberwell, Deptford, Greenwich, Hackney, Lewisham, Paddington, Poplar, Southwark, Stepney, Stoke Newington and Wandsworth); rates were made half-yearly and collected half-yearly in six boroughs (Chelsea, Hammersmith, Holborn, Kensington, St. Pancras and Westminster); rates were made half-yearly and collected in quarterly instalments in five boroughs (Bethnal Green, Finsbury, Islington, Lambeth and Shoreditch) and in the City of London (*g*). [550]

In the quinquennial year a rate based on the quinquennial valuation cannot be made before April 6, the date when the valuation list comes into force. If, by inadvertence, the rate was made, allowed and published before that date it would seem that it could not be abandoned but that it would be necessary to appeal against it and have it quashed (*h*). Cases have occurred, however, where the rate has been re-made without other formality. [551]

Allowance by Justices.—The allowance of a rate by justices though no longer necessary in the rest of England and Wales (*i*) is still necessary in London. The rate may be allowed by two or more justices (*k*) or by a metropolitan police magistrate acting alone (*l*). The justices

(*u*) R. & V.A. 1925, s. 58 (1); 14 Halsbury's Statutes 679; applied to London by R. & V. (Apportionment) Act, 1928, s. 7 (1) (*c*); 14 Halsbury's Statutes 723.

(*a*) London Government Act, 1899, s. 8 (3); 11 Halsbury's Statutes 1290; *Evans v. Battersea Borough Council* (1908), 72 J. P. 189; 38 Digest 635, 1635.

(*b*) London Government Act, 1899, s. 10 (3); 11 Halsbury's Statutes 1291.

(*c*) Poor Rate Assessment and Collection Act, 1869, s. 15; 14 Halsbury's Statutes 550.

(*d*) *Evans v. Battersea Borough Council*, *supra*.

(*e*) London (Rate Collection) Accounts Order, 1901, art. 3.

(*f*) 14 Halsbury's Statutes 585.

(*g*) See "London Statistics," Vol. XXXVIII., p. 398, and L.C.C. return of "Rates Made," 1934–35.

(*h*) *R. v. Cambridgeshire Justices* (1834), 4 L. J. (M. C.) 8; 38 Digest 616, 1414.

(*i*) R. & V.A., 1925, s. 4 (1); 14 Halsbury's Statutes 628.

(*k*) Poor Relief Act, 1601, s. 1; *ibid.*, 477.

(*l*) Metropolitan Police Courts Act, 1839, s. 14; 11 Halsbury's Statutes 252.

have no jurisdiction to inquire whether the rate is just and proper—the allowance is a purely ministerial act (*m*). If the rate is so irregular as to be unenforceable the justices may refuse to allow it (*n*). A copy of the valuation list and provisional lists must be produced when application is made to the justices or a magistrate to allow a rate (*o*). [552]

Publication.—A notice that a rate has been made must be published on or near the doors of all the churches or chapels of the Established Church in the rating area (*p*). In London there are churches in all the rating areas and no alternative to publication on or near the church doors is necessary. The notice need not be signed (*q*). If the rate is not duly published, it is void and cannot be enforced (*r*). The production of the rate book with the allowance of the rate by the justices, is, if the rate is in the form prescribed by law, *prima facie* evidence of the due making and publication of the rate (*s*). [553]

Form of Demand Note.—All the rates collected in a metropolitan borough from any person by the borough council must as far as practicable be levied on one demand note, the form of which is prescribed by the M. of H. (*t*). Similar provisions apply in the City of London (*u*). The present form has been prescribed under the R. & V.As. (*a*). The items in the demand notes in use in each rating area in London with the rate in the £ set against them are shown in the annual volumes of "London Statistics" (*b*). [554]

Retrospective Rates.—The prohibition from levying a rate in respect of past expenditure which applied to the poor rate (*c*) and presumably to the whole of the general rate made by a metropolitan borough council (*d*) is now removed by the L.C.C. (General Powers) Act, 1933 (*e*). The Act under which a rate is made has to be looked at in each case (*f*). The precepts of the Railway Assessment Authority under the Act of 1930 (*g*) related only to expenditure already incurred, but latterly they provide for prospective charges. [555]

(*m*) *R. v. Yarborough (Earl)* (1840), 12 A. & E. 416; 33 Digest 429, 1424; *Fox v. Davies* (1848), 6 C. B. 11.

(*n*) *R. v. Wilkinson* (1886), 2 T. L. R. 869.

(*o*) Valuation (Metropolis) Act, 1869, s. 63; 14 Halsbury's Statutes 580.

(*p*) Poor Rate Act, 1743, s. 1; *ibid.*, 482, as amended by the Parish Notices Act, 1837, s. 2; 6 Halsbury's Statutes 122.

(*q*) *Burnley v. Methley Overseers* (1850), 1 E. & E. 789; 38 Digest 584, 1174, where the question of publication is discussed in detail.

(*r*) *Beeson v. Derby Overseers* (1903), 89 L. T. 47; 33 Digest 594, 1241.

(*s*) Poor Rate Assessment and Collection Act, 1869, s. 18; 14 Halsbury's Statutes 551.

(*t*) London Government Act, 1869, s. 11 (3); 11 Halsbury's Statutes 1232.

(*u*) City of London (Union of Parishes) Act, 1907, s. 21; *ibid.*, 608.

(*a*) Form of Demand Note (London) Rules, 1930, made under s. 58 (1) of R. & V.A., 1925, as applied to London by R. & V. (Apportionment) Act, 1925, s. 7 (1) (c) and Sched. II.; *ibid.*, 723, 728.

(*b*) *E.g.* "London Statistics," Vol. XXXVIII, pp. 390—393, and L.C.C. return "Rates Made," 1934-35.

(*c*) *Waddington v. London Union* (1858), E. R. & E. 270; 38 Digest 590, 1203; *Croydon Corp. v. Croydon R.D.C.*, [1908] 2 Ch. 321; 38 Digest 598, 1230.

(*d*) London Government Act, 1869, s. 10; 11 Halsbury's Statutes 1231.

(*e*) L.C.C. (General Powers) Act, 1933, s. 67 (2); 26 Halsbury's Statutes 593.

(*f*) *Harrison v. Stickney* (1848), 2 H. L. Cas. 108; 41 Digest 59, 427.

(*g*) Railways (Valuation for Rating) Act, 1930; 23 Halsbury's Statutes 455.

Deficiency in Poor Rate.—It has been judicially decided that notwithstanding the provisions of sect. 10 of the London Government Act, 1899 (*h*) (see *ante*, p. 242), the deficiency in the poor rate which is payable by promoters of an undertaking under sect. 133 of the Lands Clauses Consolidation Act, 1845 (*i*), is not the deficiency in the whole of the general rate but only so much of the general rate as represented the old poor rate, including any precepts included therein (*k*). It is, therefore, necessary to split up the general rate for this purpose (*l*). The contribution is payable until the works are completed and assessed. Sect. 133 does not authorise the rating authority to rate the promoters and the sums due are recoverable, in case of default, by action and not by distress. No entry is made in the valuation list of the value on which the contribution is made, nor is any portion of the contribution payable by the rating authority to the precepting authorities (as is the case outside London). [556]

Abatements to Owners and Compounding.—The system by which owners are rated or pay rates in lieu of the occupiers was revised by sect. 11 of the R. & V.A., 1925 (*m*), so far as the rest of England and Wales is concerned, but in London, sects. 3, 4 of the Poor Rate Assessment and Collection Act, 1869 (*n*), are still in operation. These provisions apply to the general rate in the metropolitan boroughs and to the poor rate in the City of London. Somewhat similar provisions contained in the City of London Sewers Act, 1848, apply to the general rate in the City of London (*o*). Apart from the difference in the limits of rateable value, the chief difference between the old system in London and the revised system outside London lies in the fact that there is no enactment in London allowing a rating authority to enter into an agreement with an owner unless the owner is willing to contract to pay the rates whether the premises are occupied or not. Nevertheless as respects local authorities' housing schemes, agreements of this nature have been made between the housing authority and the rating authority with the acquiescence of the M. of H. [557]

Under sect. 3 of the Act of 1869, an agreement between the rating authority and the owner may be made optional in regard to each individual property not exceeding a rateable value of £20, but the owner must agree to pay the rates whether the property is occupied or not. The owner's commission is limited to 25 per cent. of the amount of the rate, or such smaller commission as may be agreed.

Twenty-one of the rating authorities in London enter into agreements with owners, in some cases only to a limited extent. The abatements allowed range from 2½ to 20 per cent. and the maximum rateable value ranges from £11 to £20. [558]

Under sect. 4 of the Act of 1869 (*p*), the rating authority may

(h) 11 Halsbury's Statutes 1231.

(i) 2 Halsbury's Statutes 1160.

(j) *Islington Borough Council v. London School Board* [1908] 2 K. B. 854; 11 Digest 107, 42.

(k) Outside London one-half of the deficiency in the general rate is now payable in urban areas under R. & V.A., 1925, s. 2 (7); 14 Halsbury's Statutes 620.

(l) 14 Halsbury's Statutes 632. Amended by R. & V.A. 1928, s. 3; *ibid.*, 710, and by L.G.A., 1929, s. 71; 10 Halsbury's Statutes 930.

(m) 14 Halsbury's Statutes 546, 547.

(n) City of London Sewers Act, 1848; City of London (Union of Parishes) Act, 1907, s. 15 (1); 14 Halsbury's Statutes 605; and R. & V.A., 1932, s. 1 (2); 25 Halsbury's Statutes 537.

(p) 14 Halsbury's Statutes 547.

make a compulsory order requiring all owners of hereditaments in which a dwelling-house is included not exceeding a rateable value of £20 to be rated instead of the occupiers, and allowing a commission of 15 per cent. of the rate. But the owner can, thereupon, require the rating authority to rate him whether the hereditaments are occupied or not, and in that event a further commission not exceeding 15 per cent. is payable. Compulsory orders are made by four rating authorities in London (Chelsea, Hampstead, Holborn and Westminster), the abatements allowed being the statutory 15 per cent. plus percentages ranging from 1 to 5 per cent. where the owner pays rates whether the property is occupied or not.

The policy of "no compounding" is adopted by four rating authorities (Camberwell, Hackney, Stoke Newington and Woolwich), three other councils (Battersea, Islington and Lewisham) enter into agreements in exceptional cases only, and in one borough (St. Marylebone) no new agreements are made. Particulars of the practice in London are given in the L.C.C. annual returns of rates made and rate collection leakages and in "London Statistics" (g). [559]

"Owner" is defined in sect. 20 of the Act of 1869 (r) as any person receiving or claiming the rent of the hereditament for his own use or receiving it for the use of any corporation aggregate, or of any public company or of any person for whom he is acting as agent.

An owner-occupier is excluded by the definition. A hereditament only remains within the scope of sect. 4 as long as its rateable value does not exceed £20 (s); but the court were divided on the question whether the same condition applies to agreements under sect. 3. It would appear that a rating authority may not act under both sect. 3 and sect. 4 at the same time (t), at any rate in the case of hereditaments which include a dwelling-house. Hereditaments which do not include a dwelling-house can only be compounded for under sect. 8. [560]

Recovery of Rates.—The procedure in London does not differ in general from that applicable in England and Wales, the remedy being by distraint on the ratepayer's goods, after the issue of a summons and the granting of a distress warrant by two magistrates in petty sessions (u) or by a metropolitan police magistrate sitting alone (a), these proceedings being followed if necessary by committal of the offender in default of distress.

In the case of non-payment of rates by an owner who is liable to pay rates in lieu of the occupier there is a difference between London and the rest of the country. [561]

In the default of the owner, the occupier may both in London and elsewhere voluntarily pay the rate and deduct the amount from the rent due or accruing due (b), or the rating authority may demand the rate from the occupier and fourteen days afterwards may distrain

(g) *E.g.*, "London Statistics," Vol. XXXVIII., pp. 399, 413, 424.

(r) 14 Halsbury's Statutes 551.

(s) *Norwood Overseers v. Salter*, [1892] 2 Q. B. 118; 88 Digest 514, 675.

(t) *Jones v. Woolwich Borough Council* (1903), reported in Ryde and Konstan's Rating Appeals, 1894-1904, p. 838.

(u) There are certain exceptions where provisions in local Acts have been continued by schemes under the London Government Act, 1899.

(a) Metropolitan Police Courts Act, 1839, s. 14; 11 Halsbury's Statutes 252.

(b) Poor Rate Assessment and Collection Act, 1869, s. 8, re-enacted outside London by the R. & V.A., 1925, s. 11 (7); 14 Halsbury's Statutes 548, 635.

upon his goods (c). The occupier is entitled to deduct the amount of the rates and the expense of distraint from the rent due or accruing due. But there are two qualifications in sect. 12, first the amount of the sum raised by the distress on the occupier must not exceed the rent accrued due, secondly the occupier is only liable for the rates in respect of the period of his occupation whereas the owner may be liable whether the property was occupied or not. In London there is a third process available; the rating authority may distrain on the owner's goods and recover the rates from him in the same way as they can recover rates from the occupier (cc). [562]

VALUATION FOR RATING

Valuations of property in London for rating purposes are still governed by the Valuation (Metropolis) Act, 1869 (d). When the Rating and Valuation Bill, 1925, was introduced into Parliament, London was included, but during the passage of the Bill through Parliament, London was excluded. A promise was, however, given by the Minister in charge of the Bill that a Bill for London would be introduced at the earliest practicable opportunity (e). Some of the minor provisions of the Act of 1925 have been applied to London by the R. & V.A., 1928 (f), and the R. & V. (Apportionment) Act, 1928 (g), but the most important variation of the Act of 1869 in the direction of assimilation to the rest of the country was made by sect. 31 of the Finance Act, 1930 (h), which provided for a separate valuation for income tax under Scheds. A. or B. in London. Thus the valuations under the Act of 1869 are no longer conclusive for both rates and taxes and the inspectors of taxes no longer sit with the London assessment committees. [563]

The chief difference between London and the rest of England and Wales now remaining (apart from matters of procedure) is the limited power of the occupier to obtain or of the rating authority or assessment committee in London to make an alteration in an assessment during a quinquennial period (i). A proposal is under consideration which would remove this difference by means of a modification of sect. 37 of the R. & V.A., 1925 (k), designed to be acceptable to both the London and the extra-London assessment authorities, and it is possible that in the near future the valuation practice for rating as well as for taxes will be the same throughout England and Wales so far as it affects the ratepayer and taxpayer. [564]

Co-ordination and Uniformity.—While much has been accomplished by voluntary action by rating and assessment authorities, following upon assessment conferences convened by the L.C.C. prior to each quinquennial valuation since 1890, there is no effective provision for securing uniformity of assessment throughout the County of London.

(c) Poor Rate Assessment and Collection Act, 1869, s. 12, re-enacted outside London by the R. & V.A., 1925, s. 11 (7); 14 Halsbury's Statutes 635.

(cc) *Ibid.*, s. 11, repealed outside London by R. & V.A., 1925, Sched. VIII.

(d) 14 Halsbury's Statutes 552.

(e) See L.C.C. Minutes, November 17, 1925, p. 737.

(f) R. & V.A., 1928, s. 1; 14 Halsbury's Statutes 708.

(g) R. & V. (Apportionment) Act, 1928, Sched. II.; *ibid.*, 728.

(h) 23 Halsbury's Statutes 145.

(i) Valuation (Metropolis) Act, 1869, s. 47; 14 Halsbury's Statutes 572.

(k) 14 Halsbury's Statutes 664.

Unlike other counties, there is no county valuation committee or any authority with the powers of a county valuation committee, there is no co-ordination by means of the revision by an assessment committee of the lists of a number of valuation areas, and there are no means by which, in the event of under-assessment in a rating area, either the L.C.C. or a metropolitan borough council can effectively appeal. [565]

Sect. 32 of the Act of 1869 (*l*) provided a novel procedure by way of appeals against totals in substitution for the procedure under the County Rates Act, 1852 (*m*), but the decisions of the House of Lords (1891 to 1894) in the appeals against totals instituted by the L.C.C. (*n*) showed that uniformity of valuation could not be secured in this way.

The county council, as a ratepayer in every rating area (except perhaps in the Inner and Middle Temple) have a ratepayer's right of objection to the assessment of individual hereditaments, followed by appeals, if necessary, but this course is impracticable owing to the limitation of the time in which objection can be made, combined with the limitation of the circumstances in which alone assessments may be altered during a quinquennial period (*o*). This difficulty does not exist outside London. [566]

Form of Valuation List.—The procedure for making or preparing the valuation list differs in London from the rest of England and Wales. Outside London the rating authority make a "draft" valuation list; in London they make a valuation list, but the valuation list in London, like the draft valuation list in the rest of England and Wales, is subject to revision by the assessment committee. The form of valuation list in London is prescribed by the M. of H. (*p*). [567]

The derating provisions of the L.G.A., 1929, necessitate the division of the list (in London as in the rest of England and Wales) into three parts, namely Part I. hereditaments other than industrial and freight transport hereditaments, Part II. industrial hereditaments and Part III. freight transport hereditaments, but in London the form is more complicated since it has to provide separate columns for the values (1) as estimated by the rating authority, and (2) as determined by the assessment committee; and also for supplemental lists and provisional lists, there are separate columns for the particulars in the valuation lists in force, and an additional part (Part IV.) to provide for cases where an owner or occupier claims that a hereditament has become an agricultural hereditament.

On the other hand there is no column in the London form for the rateable value of tithe rentcharge, or for land used as a railway or canal or land covered with water since the partial exemption (which was continued by the Act of 1925, Second Schedule, Parts II. and III.), does not apply in London (except in the ancient parish of Woolwich). [568]

Quinquennial, Supplemental and Provisional Lists.—In London there are three kinds of valuation lists: (1) the quinquennial list

(*l*) 14 Halsbury's Statutes 562.

(*m*) *Ibid.*, 520.

(*n*) L.C.C. v. St. George's Union, [1894] A. C. 600; 38 Digest 646, 1633.

(*o*) Valuation (Metropolis) Act, 1869, ss. 42 (3), 47; 14 Halsbury's Statutes 567, 572.

(*p*) London (Form of Valuation List) Rules, 1933 (S.R. & O., 1933, No. 785), made under R. & V.A., 1925, s. 58; *ibid.*, 670; applied to London by R. & V. (Apportionment) Act, 1928, s. 7 (1); *ibid.*, 723.

(referred to in sect. 46 (2) of the Valuation (Metropolis) Act, 1869 (g), as the "new" valuation list), (2) the supplemental list under sect. 46 (1) of the Act, (3) the provisional list under sect. 47. By sects. 46 and 47, these three kinds of list together constitute the valuation list in force, and form the basis on which the ratepayer pays rates. Precept rates are, however, based on the totals of the quinquennial list, or of the quinquennial as altered by the supplemental lists, and by sect. 47 (11) provisional lists do not affect the totals.

A new quinquennial list has been made in every fifth year since 1870 and has come into force on April 6 in every fifth year since 1871. [569]

Annual supplemental lists are made in each of the first four years of a quinquennial period showing all the alterations which have taken place during the preceding twelve months in any of the matters stated in the valuation list but contain only the hereditaments affected by such alterations (r). The proceedings in connection with the making and revision of a supplemental list are similar to those adopted in the case of a quinquennial list; if no alteration has taken place which makes a supplemental list necessary, the rating authority send a certificate to that effect to the assessment committee (r).

Provisional lists may be made at any time if in the course of any year the value of a hereditament is increased by the addition thereto or erection thereon of any building or is from any cause increased or reduced in value (s). The duration of provisional lists is temporary and continues only until the first supplemental or quinquennial list which is subsequently made comes into force (t). [570]

In practice the entries in provisional lists made during the course of a year are carried into the supplemental list with any modifications due to changes of circumstances which may have occurred in the meantime.

The provisional list procedure in London differs from the proposal procedure in the rest of England and Wales, of which it is the nearest equivalent. A vital difference is that a condition precedent to the alteration of an assessment by means of a provisional list is that there shall have been in the course of the year an increase or reduction in the value of the hereditament due to a specific cause. The opening words of sect. 47 are, "If in the course of any year the value of any hereditament is increased by the addition thereto or erection thereon of any building or is from any cause increased or reduced in value." These words have been held to govern supplemental as well as provisional lists (a). [571]

The question what constitutes a cause and the method of relating the cause to the assessment has been the subject of a number of legal decisions. See 38 Digest, pp. 639—643. The whole question was reviewed in *L.C.C. v. Islington Assessment Committee* (b), a tramway case.

Among the causes which have been held to justify an increase or reduction of assessment in the circumstances of the particular cases are the following: namely, increased value of existing water mains

(g) 14 Halsbury's Statutes 571.

(r) Act of 1869, s. 46 (1); 14 Halsbury's Statutes 571.

(s) *Ibid.*, s. 47; *ibid.*, 572.

(t) *Ibid.*, s. 47 (8); *ibid.*, 574.

(a) *Camberwell Assessment Committee v. Ellis*, [1900] A. C. 510; 38 Digest 642, 1861.

(b) [1915] A. C. 762; 38 Digest 643, 1869.

due to the connection of new houses (c), a serious fall in the net profits of docks, but limited to the fall in the valuation year (d), a fall in the net profits of a railway due to competition of tramways, omnibuses and underground railways (e), reduced value of exhibition grounds due to changes in user (f), reduced value of licensed premises due to increase in licence duties (g) and in beer duty (h). On the other hand, an increase of assessment was held not to be justified where a large premium was paid for licensed premises subsequently to the quinquennial valuation (i). [572]

Until sect. 30 of the R. & V.A., 1925, was applied to London by the Second Schedule to the R. & V. (Apportionment) Act, 1928 (k), there were no means whereby even clerical or arithmetical errors in a quinquennial or supplemental list could be corrected.

The fact that a hereditament in London has in the course of any year become or ceased to be an agricultural, industrial or freight transport hereditament is a ground for a provisional list (l).

When an industrial or freight transport hereditament becomes unoccupied the practice is to transfer it forthwith from Part II. or Part III. (as the case may be) into Part I. of the valuation list. If it becomes occupied again for industrial or freight transport purposes it is re-transferred to Part II. or Part III.—but only the owner or occupier may apply for a provisional list on the ground that a hereditament has become an agricultural, industrial or freight transport hereditament; a rating authority may not do so (m).

Where an assessment committee, on consideration of such a provisional list, decide that a hereditament is not an agricultural hereditament or that no part is used for industrial or freight transport purposes, they are required to strike out all entries in the said list with respect to the hereditament (n). [573]

Returns.—The first step in the procedure laid down by the Act of 1869 (o) for the making of a new quinquennial valuation list is the obtaining by the rating authority of returns from occupiers giving particulars (including rent and tenure) of the hereditaments which they occupy. Returns in the cases of blocks of flats, offices, etc., are obtained from the owners.

Prior to the Finance Act, 1930, the form of the returns required to be made by occupiers (form 9B) and by owners of property let out in

(c) *R. v. New River Co.* (1870), 4 Q. B. D. 809; 38 Digest 640, 1577.

(d) *R. v. Poplar Union Assessment Committee* (1884), 13 Q. B. D. 364; 38 Digest 640, 1578.

(e) *R. v. Southwark Assessment Committee*, [1909] 1 K. B. 274; 38 Digest 643, 1607.

(f) *R. v. Hammersmith Assessment Committee* (1909), 101 L. T. 543; 38 Digest 642, 1609.

(g) *R. v. Shoreditch Assessment Committee*, [1910] 2 K. B. 859, the *Crown and Shute Case*; 38 Digest 643, 1608.

(h) *Jenkinson v. Islington* (1922), London Q. S. reported in *Rating and Income Tax*, Vol. XVIII, p. 41; *Hoare v. Stepney* (1923), *ibid.*, p. 123 (a brewery case).

(i) *Camberwell Assessment Committee v. Ellis*, [1900] A. C. 510; 38 Digest 642, 1601.

(k) 14 Halsbury's Statutes 72.

(l) L.G.A., 1929, s. 70 (1); 10 Halsbury's Statutes 929.

(m) *Ibid.*

(n) London (Valuation Lists) Rules, 1933, art. 11; S.R. & O., 1933, No. 785.

(o) Valuation (Metropolis) Act, 1869, ss. 55, 56; 14 Halsbury's Statutes 577, 578.

parts (form 9C) under sects. 55, 56 of the Act of 1869 was not only settled by H.M. Treasury, but sufficient copies were supplied by the inspectors of taxes for the requirements of London. The form of return is now, under sect. 32 (2) of the Finance Act, 1930 (*p*), prescribed by the M. of H. (*g*) and copies are printed by the local rating authorities for their respective areas. The form of return is identical with that set out in Part II. of the schedule of the Returns rules for the remainder of England (*r*), but the London rules contain additional words allowing a return to be required "as to any other matters in respect of which particulars may reasonably be required for the purpose of carrying out the Act of 1869 and the Acts incorporated therewith." [574]

The forms of return are not entirely uniform throughout London. The rules enable individual borough councils to include questions as to which there is not unanimity among rating authorities in general, such as (1) whether the rent is a restricted rent under the Rent Restriction Acts, (2) the price paid for the hereditament by an owner-occupier, (3) particulars relating to advertisement rents, (4) the number of living rooms, bedrooms, bathrooms, etc., in dwelling-houses, etc. Some of these questions are included in the forms of return issued in certain boroughs.

The procedure laid down in sects. 55, 56 is confined to the making of a new (or quinquennial) valuation list. It has been the practice, however, for the rating authority to obtain returns in respect of hereditaments which fall to be included in provisional and supplemental lists. [575]

Besides the returns which ratepayers are required to make to the rating authority under sects. 55, 56, returns may also be required by the assessment committee under sect. 57 of the Act of 1869 applicable to any list. Such returns must be by order and the particulars must be required for the due execution of the Act. The time within which the owner or occupier must obey the order is fourteen days after service (*s*). The penalty for refusing or neglecting to make any return lawfully required is, on summary conviction, £5, or for making a false return £10 (sect. 58).

In the case of *Grant v. Knaresborough U.D.C.* (*t*), where the form of return used for licensed premises was declared invalid (the U.D.C. withdrew its defence before the hearing) the form of return was substantially different from that used in London.

The returns, whether made to the rating authority under sects. 55, 56 or to the assessment committee under sect. 57 of the Act of 1869, are sent by the clerk of the assessment committee to the inspector of taxes as soon as may be after the final approval of the valuation list and in any case before April 1 next following (*u*). They may be retained by him until July 1, but the clerk of the assessment committee is entitled to have access to them and may require any particular return to be re-delivered to him if needed for the performance of his duties (*x*). [576]

(*p*) 23 Halsbury's Statutes 146.

(*q*) See the R. & V. (Metropolis) Acts Returns Rules, 1934; S.R. & O., 1934, No. 646.

(*r*) R. & V.A. (Returns) Rules, 1926 (S.R. & O., 1926, No. 795); 14 Halsbury's Statutes 739.

(*s*) Valuation (Metropolis) Act, 1869, s. 57; *ibid.*, 578.

(*t*) [1925] Ch. 310; Digest (Supp.).

(*u*) Finance Act, 1930, s. 32 (1); 23 Halsbury's Statutes 146.

(*x*) *Ibid.*, s. 32 (3).

The question whether an occupier of licensed premises may be required to make a return relating to his trade has been the subject of proceedings at metropolitan police courts, and the particulars deemed to be necessary for the due execution of the Act have been considered and determined. It would appear that particulars relating to volume of trade (whether expressed as quantity or as value) may be required (a) but not particulars which would disclose net profits (b). [577]

Deposit of Valuation List.—Sect. 42 of the Act of 1869 (c) requires the rating authority to make and sign (by the clerk) the quinquennial or supplemental list (as the case may be) in duplicate and deposit it before the first of June in the place in which the rate books are deposited (d), *i.e.* generally at the town hall.

Notification of the deposit of the list must be given by affixing a notice to a door of every church or chapel of the Established Church in the parish before the commencement of divine service on the Sunday following the receipt of the notice and the two following Sundays (e). The notice must state the times at which and the modes in which objections are to be made (f).

The list is on deposit with the rating authority for 14 days or possibly 17 days, since the rating authority are required to transmit the list to the assessment committee not sooner than 14 nor later than 17 days after notice is given of the deposit of the list (g). [578]

Ratepayers within the parish have the right of inspecting and taking copies of and extracts from the list during the 14 or 17 days when it is on deposit with the rating authority (h) and ratepayers in the assessment area have a similar right when the list has been transmitted to the assessment committee (h). In all the metropolitan boroughs the areas are identical and the list can be inspected at the town hall during the whole period of 25 days.

Apart from the general notice posted on church doors the rating authority must serve on the occupier (i), or owner who pays the rates (j), a specific notice of the gross and rateable value in cases where the rating authority or the assessment committee (1) insert a hereditament not previously assessed, or (2) raise the gross or rateable value above the value for the time being in force (otherwise than on an assessment committee's determining an objection). [579]

Right of Objection.—Under sect. 11 of the Act of 1869 (k), objections may be made before the assessment committee by any authorised person who feels himself aggrieved by reason of the unfairness or incorrectness of the valuation of any hereditament, or by reason of the insertion or incorrectness of any matter in the valuation list or by reason of the omission of any matter, or by reason of a valuation list

(a) Proceedings at South-Western police court, 1905; Clerkenwell, 1920; South-Western, 1925.

(b) London Quarter Sessions, 1926.

(c) 14 Halsbury's Statutes 567.

(d) Union Assessment Committee Act, 1862, s. 17; 14 Halsbury's Statutes 534, as applied by s. 7 of the Act of 1869.

(e) Valuation (Metropolis) Act, 1869, s. 66; *ibid.*, 530.

(f) *Ibid.*, s. 10; *ibid.*, 555.

(g) *Ibid.*, s. 42 (2); *ibid.*, 567.

(h) Union Assessment Committee Act, 1862, s. 17; *ibid.*, 534, as applied by s. 7 of the Act of 1869.

(i) Act of 1869, s. 9; *ibid.*, 555.

(j) Valuation (Metropolis) Amendment Act, 1884, s. 2; *ibid.*, 596.

(k) 14 Halsbury's Statutes 555.

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not having been transmitted by the rating authority to the assessment committee. Ratepayers in the parish are specifically referred to in sect. 12 as being authorised persons.

Notice of objection must be given by a ratepayer before the expiration of twenty-five days after the list is deposited (sect. 42 (8)), but this time limit does not apply to notices of objection made by the rating authority. Failure to give notice of objection in time debars a ratepayer from taking any subsequent action until the next quinquennial valuation (4).

An assessment committee may, however, make alterations and corrections before the valuation list is finally approved (m). [580]

The notice must state the grounds of objection and, by sect. 11 of the Act of 1869, must specify the correction which the objector desires to be made. The objector must give notice in writing to both the rating authority and the assessment committee, and if the ground of any objection is unfairness or incorrectness in the valuation of another hereditament a notice must also be given to the owner or occupier concerned (n). The notices may be sent by post under sect. 65 of the Act of 1869 (o).

By sect. 42 (4) of the Act of 1869, the first meeting of the assessment committee for hearing objections must be held not less than sixteen days after the transmission of the list to them by the rating authority, and the assessment committee must give not less than sixteen days' notice of a meeting (sect. 42 (5)).

Notices of objection by the rating authority must be given not less than seven days before the meeting (sect. 42 (6)).

The assessment committee are given by sect. 42 (4) until October 1 to complete this stage of the revision of the list. [581]

If any alterations are made in the list, the assessment committee must forward the list to the rating authority to be redeposited and must appoint a day not less than 14 nor more than 28 days after the date of re-deposit for hearing objections, of which objections 7 days' notice must be given by the objector (p).

By sect. 42 (8) of the Act of 1869, the assessment committee must finally approve the list by November 1 and send one copy to the rating authority and one copy to the clerk of the L.C.C., but the latter copy is returned subsequently to the assessment committee under sect. 42 (11).

Between November 1 and the following April 6 when the list comes into force (sect. 43), the time table allows for the publication of the totals by the clerk of the L.C.C. before December 1 (sect. 42 (11)), for the holding of special sessions after November 30 and before the ensuing January 1 (sect. 42 (10)), and for the holding of assessment sessions after February 1 and before March 31 (sect. 42 (13)). [582]

Gross Value.—In London every hereditament (including factories and public service undertakings) has a gross value, with the exception of hereditaments assessed by the Railway Assessment Authority,

(4) See *Stepney Borough Council v. Walker (John) & Sons, Ltd.*, [1934] A.C. 365; Digest Supp.

(m) Union Assessment Committee Act, 1862, s. 20; 14 Halsbury's Statutes 530, as applied by s. 7 of the Act of 1869.

(n) *Ibid.*, s. 18, as so applied.

(o) 14 Halsbury's Statutes 580.

(p) Union Assessment Committee Act, 1862, s. 21; 14 Halsbury's Statutes 537; and Act of 1869, s. 42 (7); 14 Halsbury's Statutes 568.

who determine only net annual values and rateable values (*g*); and Government property where the values fixed are the values upon which contributions are made in lieu of rates, *i.e.* the equivalent of the rateable values.

In London, as in the rest of England and Wales, gross value is the annual rental value assuming the tenant to be responsible for rates and the landlord for repairs, etc. The wording of the definition of gross value in sect. 4 of the Valuation (Metropolis) Act, 1869 (*r*), differs from that in sect. 68 of the R. & V.A., 1925 (*s*), which extends to the rest of England and Wales, though a dictum of Lord HERSHELL in the *Crosness Outfall Case* (*t*) suggests that there is no difference in meaning.

In London, gross value is defined as meaning the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament, etc. (*u*), whereas in the rest of England and Wales the definition is "the rent at which a hereditament might reasonably be expected to let from year to year," etc. (*a*). [583]

The Rating and Valuation Bill, 1925, when introduced, followed the wording of the Valuation (Metropolis) Act, 1869, as being, no doubt, an improvement on the wording of sect. 15 of the Union Assessment Committee Act, 1862 (*b*), but during the Bill's passage through Parliament an amendment was carried substituting the phrase used in the Act of 1862 (*c*).

A proviso to the definition of gross value in sect. 68 of the Act of 1925 (not appearing in sect. 4 of the Act of 1869) requires that in estimating the annual rental value of a hereditament to a tenant no account shall be taken of the value of any services which the landlord renders to the tenant, other than the provision of the hereditament or repairs to, or maintenance of it. In London there is no such proviso, and in fact there is a decision which points to the inclusion of sums paid for services as part of the gross value (*d*). The general practice is, however, in London as in the rest of England and Wales, to ascertain the full inclusive gross rental and to exclude therefrom the cost of services as well as rates in order to arrive at gross value. [584]

Net Annual Value and Rateable Value.—As regards the other values used in the valuation lists, there is now no difference (as there used to be) in the phraseology used for London and in the rest of the country.

There are, however, differences in the basis on which the rateable values of certain classes of property are arrived at. In the case of the partial exemption of land used as a railway or canal, land covered with water, and tithe rentcharge, this is now granted under sect. 22 of the R. & V.A., 1925, by means of a proportionate reduction of the rateable value, whereas, in the few cases where an exemption is in

(*g*) Railways (Valuation for Rating) Act, 1930, s. 6; 23 Halsbury's Statutes 463.

(*r*) 14 Halsbury's Statutes 553.

(*s*) *Ibid.*, 687.

(*t*) *L.C.C. v. Brith Parish (Churchwardens, etc.)*, [1893] A. C. 562, at p. 588; 38 Digest 429, 42.

(*u*) Valuation (Metropolis) Act, 1869, s. 4; 14 Halsbury's Statutes 553.

(*a*) R. & V.A., 1925, s. 68; *ibid.*, 687.

(*b*) Repealed by the R. & V.A., 1925.

(*c*) Parliamentary Debates, 1925.

(*d*) *Pullen v. St. Saviour's Union*, [1900] 1 Q. B. 138; 35 Digest 519, 697.

operation in London, it is still allowed by means of a reduction of the poundage of the rate and not by a reduction of the rateable value. Secondly, in the case of factories outside London, the rateable value is the net rental value if the tenant undertook to bear the cost of repairs (e), etc. Thus the rateable value outside London allows for the entire cost of repairs, whereas in London the allowance for repairs, etc., is restricted to one-third of the gross value (f). The difference is less than formerly owing to the limitation of the classes of machinery liable to assessment (g). [585]

Scale of Deductions.—A scale of maximum deductions from gross value to arrive at rateable value which was one of the features of the Valuation (Metropolis) Act, 1869 (h), was adopted in principle in the R. & V.A., 1925, but as a scale of fixed deductions (i). In practice, however, the maximum deductions have generally been allowed in London.

The London scale is in a state of flux. The scale of the Act of 1869 was revised temporarily by the Valuation (Metropolis) Amendment Act, 1925 (k). Another temporary scale was applied to the quinquennial valuation of April 6, 1931, and has been extended by the R. & V.A., 1932, to the quinquennial valuation, April 6, 1936. The London scale gives higher allowances than the scale applicable to the rest of England and Wales in the case of houses and buildings, without land other than gardens, with gross values above £21 and below £121. [586]

The two scales are as follows :

Gross values.	Rest of England and Wales : Fixed scale.	London : Maximum scale.
Houses and Buildings.		
Not exceeding £15.	40 per cent.	The same.
Exceeding £15 and not exceeding £20.	£6 plus 30 per cent. above £15.	The same.
Exceeding £20 and not exceeding £40.	£7 or 25 per cent. of total gross value whichever is the greater.	£7 plus 25 per cent. above £20.
Exceeding £40 and not exceeding £100.	£10 or 20 per cent. of total gross value whichever is the greater.	£12 plus 20 per cent. above £40.
Exceeding £100.	£20 plus 16½ per cent. above £100.	The same but with minimum of £24.
Land with buildings.	10 per cent.	The same.
Land without buildings.	5 per cent.	The same.
Mills and manufactories.	(No gross value).	33½ per cent.

[587]

(e) See R. & V.A., 1925, s. 22 (1) (b), and note to Second Schedule, Part I.; 14 Halsbury's Statutes 646, 692.

(f) Valuation (Metropolis) Act, 1869, Sched. III., Class 8; *ibid.*, 584.

(g) As to this, see title MACHINERY, RATING OF. The system in London is similar to that for the remainder of the country, as s. 24 of the R. & V.A., 1925; 14 Halsbury's Statutes 650; and any orders of the M. of H. thereunder were applied to London by R. & V.A., 1928, s. 1; 14 Halsbury's Statutes 708.

(h) Valuation (Metropolis) Act, 1869, Sched. III.; 14 Halsbury's Statutes 584, revised by R. & V.A., 1928, Sched. I., Part I., and extended to the year 1936 by R. & V.A., 1932, s. 1; 25 Halsbury's Statutes 537.

(i) R. & V.A., 1925, Sched. II., Part I.; 14 Halsbury's Statutes 692; revised by R. & V.A., 1928, Sched. I.; 14 Halsbury's Statutes 712.

(k) 14 Halsbury's Statutes 614.

Where the rateable value includes a fraction of a pound, the amounts are increased or reduced to the nearest complete pound, or if the fraction of a pound is 10s. it is to be disregarded (*l*). [588]

Totals.—Whereas in the rest of England and Wales, the precepts of the county councils are based on the product of a penny rate (*m*), in London they are based on the valuation list totals. The difference in incidence is described *ante*, at p. 244. In London the procedure, under sect. 14 of the Act of 1869 (*n*), is that, when the assessment committee have finally approved a quinquennial or supplemental list (but not a provisional list), they cause the totals to be ascertained and inserted in the list, one copy of which is sent to the clerk of the L.C.C., who is required to cause the totals of the gross and rateable values of all the valuation lists to be printed and circulated. The price is fixed by sect. 17 at 1d. a copy. The totals are in effect a separate entity which can only be altered on an appeal to quarter sessions under sect. 32 against totals (not by special sessions, see sect. 20). An alteration by quarter sessions of the value of an individual hereditament on appeal does not automatically affect the totals. A clerical or arithmetical error may now be corrected (*o*), but, exceptionally, an alteration in the value of a hereditament assessed by the Railway Assessment Authority does affect the totals.

The purpose and scope of appeals against totals is referred to in the title **RATING APPEALS**. [589]

Right to Inspect Documents.—By sect. 67 of the Act of 1869 (*p*), any ratepayer may inspect and take copies of any documents required by that Act to be deposited in the same place in a parish in which rate books are kept (*q*), and by sect. 69, on payment of 1s., of any valuation lists, notices of objection, returns and other documents in the possession or under the control of the assessment committee. The right of inspection is wider than that afforded to ratepayers in the rest of England and Wales (*r*). [590]

(*l*) R. & V.A., 1928, s. 2 (2); 14 Halsbury's Statutes 709.

(*m*) R. & V.A., 1925, s. 9; *ibid.*, 627.

(*n*) 14 Halsbury's Statutes 556.

(*o*) R. & V.A., 1925, s. 30; 14 Halsbury's Statutes 656, applied to London by R. & V. (Apportionment) Act, 1928, Sched. II.; 14 Halsbury's Statutes 728.

(*q*) 14 Halsbury's Statutes 580.

(*r*) This covers a deposited valuation list, a redeposited list, and the list after final approval by the assessment committee.

(*r*) R. & V.A., 1925, s. 60; 14 Halsbury's Statutes 681.

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See also titles : BREAKING UP OF ROADS ;
ROAD TRAFFIC ;
TRAFFIC COMMISSIONERS.

Introductory.—Two of the sections in this title are governed by separate legislation, viz.:

- (I.) ROADS, comprising (1) their vesting; (2) their construction, improvement and development; (3) their cleaning, lighting, repair, and maintenance; and (4) the control of streets.
- (II.) ROAD TRAFFIC (1) under the London Traffic Act, 1924, and the Road Traffic Acts, 1930 to 1934; (2) under the London Passenger Transport Acts, 1933 to 1936. [591]

I.—ROADS

Definition.—The expression "roads," as used in this title, includes all roads and streets open to public traffic and for the upkeep of which a public authority are responsible. It includes roads over bridges, embankments, viaducts, tunnels, etc., but not the structures themselves. [592]

Acts of Parliament.—The main Acts of Parliament applying to London roads are: Metropolitan Paving Act, 1817 (*a*) (Michael Angelo Taylor's Act); City of London Sewers Acts, 1848, 1851 and 1897 (*b*); Metropolis Management Act, 1855, and amending Acts, especially those of 1862 and 1890 (*c*); Metropolitan Streets Act, 1867, and the amending Acts of 1867 and 1903 (*d*); L.G.A., 1888 (*e*); London Government Act, 1899 (*f*); London Building Act, 1930 (*g*); and P.H. (London) Acts, 1891 and 1936. A variety of powers have also been obtained by the L.C.C. in respect of particular areas, streets or street works, either by special Act or by means of a General Powers Act. [593]

Road Authorities.—The various authorities which to-day exercise or are enabled to exercise powers over roads as such, as distinguished from the user of the roads by traffic are: (1) the metropolitan borough councils; (2) the Common Council of the City of London; (3) the L.C.C.; and (4) the Minister of Transport. The first three were included in the definition of "road authority" in London in sect. 16 of the London Traffic Act, 1924 (*h*). The Minister of Transport was formally declared to be a "highway authority" for the purposes of Part II. of the Development and Road Improvement Funds Act, 1909 (*i*), by sect. 57 of the Road Traffic Act, 1930 (*k*), but his multifarious powers in connection with roads would seem to have constituted him previously a *de facto* authority—see sect. 2 of the M. of T. Act, 1919 (*l*).

The roads to which this part of this title refers are those roads only which are situated within the administrative County of London, inclusive of the City. Roads outside that area, which form part of the London Traffic Area or of some other area outside the administrative county, are not dealt with. [594]

Vesting of London Roads.—The authorities in which London roads are at present vested are: (1) metropolitan borough councils; (2) City of London Corporation; (3) the L.C.C.; and (4) the Crown.

(*a*) 11 Halsbury's Statutes 838.

(*b*) 11 & 12 Vict., c. cxliii.; 14 & 15 Vict., c. xci.; and 60 & 61 Vict., c. cxxxiii.

(*c*) 11 Halsbury's Statutes 889 *et seq.*

(*d*) 19 Halsbury's Statutes 154, 163, 169.

(*e*) 10 Halsbury's Statutes 636.

(*f*) 11 Halsbury's Statutes 1225.

(*g*) 23 Halsbury's Statutes 213.

(*h*) 19 Halsbury's Statutes 187.

(*i*) 9 Halsbury's Statutes 212.

(*k*) 23 Halsbury's Statutes 652.

(*l*) 3 Halsbury's Statutes 422.

Owing to the developments in local government which have taken place since the L.G.A., 1888, and the London Government Act, 1899, the actual vesting of roads has not the same importance, from the point of view of the general public, as it once had. The powers, dissociated from ownership, of a central authority to contribute to and even take the initiative in and partly control improvements of more than purely local interest, have done much to lighten the burdens and remedy the drawbacks of local road ownership. [595]

In Metropolitan Boroughs.—It may be said that, outside the City, the roads within the County of London are generally vested in the metropolitan borough councils. By sect. 6 (1) of the London Government Act, 1899 (*m*), all public roads which were "main roads" at the time of the passing of that Act ceased to be "main roads" and were transferred to and vested in the council of the borough within which the road was situate. As a result of this provision all streets in London, exclusive of the City, apart from privately owned streets or those mentioned in the following paragraphs, are vested in the borough councils, to whom were also transferred the power of the London vestries as surveyors of highways.

In City of London.—Streets in the City are vested in the City Corporation, and the City of London Sewers Acts, 1848 to 1897, apply to them. The corporation also own the four City bridges across the River Thames, viz. Blackfriars, Southwark, London and Tower Bridges, which are maintained out of the funds of the Bridge House Estates, for which the corporation act as trustees. Recitals of the conditions under which the construction and repair of City bridges are undertaken will be found in the various Acts dealing with such bridges, and notably in the Corporation of London (Bridges) Act, 1911 (*n*). Under sect. 1 (2) of the Bridges Act, 1929 (*o*), the corporation are also a highway authority for the purpose of the acquisition of the property in a privately owned bridge and the road thereby carried, which the corporation may desire to acquire under the Act. [596]

Thames Bridges, Embankments and Tunnels.—The transfer of "main roads" in the County of London, exclusive of the City, to the metropolitan borough councils, made by sect. 6 (1) of the London Government Act, 1899 (*p*), did not affect roads "being the roadway or footway of a bridge, embankment or otherwise" which were vested in the L.C.C. as owners of the structure. The L.C.C., therefore, remained owners of the roads over bridges and embankments which belonged to them.

The embankments in question are the Albert, Chelsea and Victoria Embankments, which were transferred to the L.C.C., as successors of the Metropolitan Board of Works, by sect. 40 (8) of L.G.A., 1888 (*q*).

The Thames bridges outside the City were similarly transferred from the Metropolitan Board of Works to the L.C.C. by the same provision. These bridges, with the exception of Westminster Bridge, which was under the control of the Westminster Bridge Commissioners, and of Chelsea Bridge, which was built by H.M. Commissioners of Works, were originally toll bridges built by private concerns. The Metropolitan Board of Works purchased the toll bridges, which were transferred to them and freed by the Metropolis Toll Bridges Act, 1877 (*r*), and ten years later Westminster Bridge was transferred to

(*m*) 11 Halsbury's Statutes 1228.

(*n*) 9 Halsbury's Statutes 268.

(*q*) 10 Halsbury's Statutes 719.

(*n*) 1 & 2 Geo. 5, c. cxx.

(*p*) 11 Halsbury's Statutes 1228.

(*r*) 40 & 41 Viet., c. xcix.

them by the London Parks and Works Act, 1887 (*s.*). The cross-river bridges were made county bridges by sect. 46 of the L.C.C. (General Powers) Act, 1895 (*l.*), by virtue of which the L.C.C. acquired in respect of those bridges the rights, powers and liabilities of a county authority in respect of county bridges at common law and under various statutes described in the title *BRIDGES*. The bridges belonging to the L.C.C. are those known as the Hammersmith, Putney, Wandsworth, Battersea, Albert, Chelsea, Vauxhall, Lambeth and Waterloo Bridges, the Deptford Creek Bridge and the footbridge at Charing Cross (all transferred by the Metropolis Toll Bridges Act, 1877) and Westminster Bridge. The council are also owners of the Catford Bridge over the River Ravensbourne and of one-half of Barking Road Bridge over Bow Creek, in addition to being owners of various road bridges over canals.

The L.C.C. are also owners of a number of tunnels under the Thames, viz. the Blackwall, Greenwich and Millwall, Rotherhithe and Ratcliff, and North and South Woolwich Tunnels and of the roads therein. These tunnels were authorised by the respective Thames Tunnel Acts of 1887, 1897, 1900 and 1909 (*u.*). [597]

The Crown.—The Crown owns a number of streets on various Crown estates in London, the most important being those in the neighbourhood of the Houses of Parliament, including Old and New Palace Yards, Parliament Square, Parliament St., Bridge St., Abingdon St. and Great George St.; a section comprising Whitehall, Charing Cross, Pall Mall, Waterloo Place and Regent St.; the streets on the Regent's Park Estate of the Crown; and the streets attached to the Royal Parks. In recent years the Crown has in some instances parted with the land for street purposes, and in such cases the street is owned by the highway authority; see, for instance the Knightsbridge and other Crown Lands Act, 1879. The Grosvenor Embankment was built and is maintained by H.M. Office of Works. [598]

Construction, Improvement, etc., of London Roads. *Formation of New Streets.*—The L.C.C. are the authority for the supervision of the formation and construction of new streets within the administrative County of London, inclusive of the City; see *ante*, p. 181.

By sect. 7 of the London Building Act, 1930 (*a.*), an application must be made for the council's sanction, accompanied by plans and sections, with such particulars as may be required by the regulations of the council. By sect. 9 of the Act (*b.*), any new street intended for carriage traffic must not be less than 40 feet in width and any new street intended for foot traffic only 20 feet in width, and any new street exceeding 60 feet in length or of which the length is greater than the width must be open at both ends from the ground upwards. The gradient must not be steeper than 1 in 20. The conditions in the statute applicable to the formation of new streets are supplemented by a bye-law made in 1857 by the Metropolitan Board of Works under the Metropolis Management Act, 1855. This provides that the carriageway must curve or fall from the centre at the rate of $\frac{3}{4}$ inch for every foot of breadth, and the kerb must not be less than 4 inches nor more than 8 inches above the channel of the roadway. Footpaths must slope

(s) 12 Halsbury's Statutes 380.

(l) 11 Halsbury's Statutes 1220.

(u) 59 & 61 Vict., c. clxxii.; 60 & 61 Vict., c. cxxiv.; 63 & 64 Vict., c. cccix.;

9 Edw. 7, c. lxxviii.

(a) 23 Halsbury's Statutes 220.

(b) *Ibid.*, 221.

towards the kerb by $\frac{1}{2}$ inch for every foot of width if the footpath is unpaved, and if paved by $\frac{1}{4}$ inch. [599]

Power to form New Streets.—In addition to being the authority for the approval of the formation of a new street, the L.C.C. would also seem to have the power, notably under sect. 144 of the Metropolis Management Act, 1855 (c), of constructing new streets on their own account, and any streets so constructed would, in the ordinary course, remain the council's property. In practice, however, this power is not exercised and the formation of new streets within the county is usually carried out under a special Act, or under agreements with the borough councils or the City Corporation, and, when necessary, with the Minister of Transport. [600]

By sect. 8 (1) of the Development and Road Improvement Funds Act, 1909 (d), the Road Board, whose functions have now devolved upon the Minister of Transport, had power "to construct and maintain any new roads," and by sect. 9 (1) new roads so constructed remained maintainable by and at the cost of the Board. It would seem, therefore, that the Minister could, in case of disagreement with the L.C.C., construct independently of the council new roads in the County of London. So far the Minister and the council have agreed as regards the construction of new roads of importance in which both authorities were concerned. The new Victoria Dock Road, for instance, to which the Minister contributed, was constructed by the L.C.C., in so far as it was within London, under the Royal Victoria and other Docks Approaches (Improvement) Act, 1929 (e), the part constructed by the county council being vested in the Poplar Borough Council, but the L.C.C. remaining owners of one-half of the new Barking Road Bridge over Bow Creek, the other half being vested in the West Ham Borough Council. [601]

The London Survey.—Towards the end of 1934, the Minister of Transport decided to put in hand a "survey of highway development required in the London Traffic Area," a decision which was interpreted as an indication of intention to take a more direct initiative in the development of London roads independently of the local authorities. This decision drew a protest from the L.C.C. in a resolution adopted on April 9, 1935, in which the council regretted that, in a matter which impinged so directly on their statutory functions, they were not consulted before the Minister's decision was arrived at and announced. While not consenting to the abrogation of any of their powers or to a relaxation of their activities in executing schemes of improvement during the period occupied by the survey, they were, nevertheless, prepared to co-operate fully and to place at the disposal of the Minister such information pertinent to the survey as was in their possession, on the understanding that the council should not in any way be committed to an approval of any conclusions in the matter which might be reached by the London and Home Counties Traffic Advisory Committee. [602]

Improvements and Developments. The improvement and development of existing streets stands on a different footing from the formation of new streets. Improvement and development are primarily matters for the borough councils and the City Corporation as owners of the streets, but when such works are not merely of local importance, the

(c) 11 Halsbury's Statutes 920.

(e) 19 & 20 Geo. 5, c. xlvii.

(d) 9 Halsbury's Statutes 212.

L.C.C., as the authority concerned with "county interests," have wide powers.

The powers both of the City and of the boroughs are also very extensive in dealing mainly with the widening, straightening and diversion of streets and alterations of their levels, or of the width of carriageways or footways. [603]

By sect. 80 of the Metropolitan Paving Act, 1817 (*f*), which was extended to the City by sect. 73 of the Metropolis Management Amendment Act, 1862 (*g*), the borough councils and the Common Council, as successors of the commissioners and trustees under the Act, are empowered from time to time "to alter, widen, turn or extend any of the streets and other public places" within their jurisdiction and "to lengthen and continue or open the same from the sides or ends of any streets or public places . . . into any other street or public place."

Powers for the execution of street improvements were also conferred on vestries and district boards by sect. 72 of the Metropolis Management Amendment Act, 1862 (*h*), but their exercise is subject to consent of the L.C.C. Borough councils are also authorised, under the same section, to contribute and join with the L.C.C. or any other body or person in any such improvements. [604]

The L.C.C., as successors of the Metropolitan Board of Works, are allowed by sect. 144 of the Metropolis Management Act, 1855 (*i*), "to make, widen or improve any streets, roads or ways, for facilitating the passage and traffic between different parts of the Metropolis." This section gives the council the control of street improvements of more than local interest. [605]

The power of vestries and district boards to borrow for street improvements was transferred to the borough councils by sect. 4 of the London Government Act, 1899 (*k*), but this power can only be exercised with the previous sanction of the L.C.C. under sect. 100 of the Metropolis Management Amendment Act, 1862 (*l*), who thus retain a most effective control even over purely local developments.

As already indicated, the L.C.C. may contribute towards the cost of improvements promoted by one or more boroughs, but generally do so only when the proposed improvement is of more than purely local interest.

As to the various attempts made to ensure that owners, the value of whose property was enhanced by an improvement scheme, should contribute specially to the cost of the improvement, see the title BETTERMENT, at pp. 35—40 of Vol. II. [606]

Acquisition of Land for Road Improvements.—For the purpose of the acquisition of land for street widenings and improvements by a borough council or the Common Council of the City under sect. 80 of the Metropolitan Paving Act, 1817 (*m*), these authorities were permitted by sects. 82 to 87 of that Act (*n*) to acquire lands or buildings compulsorily, without obtaining any authority from a Government department, subject to the payment of compensation assessed by a jury, but now in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919 (*o*). [607]

(*f*) 11 Halsbury's Statutes 864.

(*h*) *Ibid.*, 984.

(*k*) *Ibid.*, 1227.

(*m*) *See supra*.

(*o*) 2 Halsbury's Statutes 1176.

(*g*) *Ibid.*, 985.

(*i*) *Ibid.*, 920.

(*l*) *Ibid.*, 991.

(*n*) 11 Halsbury's Statutes 865—869.

The Metropolis Management Acts, however, did not go so far. Sect. 144 of the Metropolis Management Act, 1855 (*p*), merely authorised the Metropolitan Board of Works "to take, by agreement or by gift, any land, rights of land or property" for the purpose of the widening or improvement of streets between different parts of the Metropolis, and directed that the Board should apply to Parliament if further powers were required. By sects. 150—152 of that Act (*q*), both the Board and the vestries were authorised to purchase lands for street improvements, but only by agreement, except in the case of land required for sewerage and drainage purposes, and in such a case only with the consent under sect. 152 of the Secretary of State (*r*). The limitations imposed by the Metropolis Management Acts on the acquisition of land are understood to have affected adversely the policy of the Metropolitan Board in respect of gradual improvements affecting different parts of the Metropolis, and to have compelled them to restrict their programme to major works for which a Bill in Parliament was justifiable.

The L.C.C., inheriting the powers of the Metropolitan Board of Works, found themselves therefore with less power than a borough council in the acquisition of land for road widenings and improvements. Whilst a borough council could acquire land compulsorily for local improvements under the Act of 1817, the L.C.C. could not do so, even for the purpose of improvements intended to facilitate "the passage and traffic between different parts of the Metropolis," unless they promoted a Bill, or the circumstances allowed them to make use of some other Act giving powers of compulsory acquisition. This situation was at length remedied by sect. 58 of the L.C.C. (General Powers) Act, 1930 (*s*), which provides that "for the purpose of making, widening or improving any streets, roads or ways for facilitating the passage and traffic between different parts of the county pursuant to sect. 144 of the Metropolis Management Act, 1855, the council may exercise within the county the like powers of acquiring land compulsorily as are exercisable by a metropolitan borough council in relation to the improvement of the streets and public places in their borough by virtue of sects. 80 to 96 of the Metropolitan Paving Act, 1817, as modified by the Acquisition of Land (Assessment of Compensation) Act, 1919, and the provisions of those sections as so modified shall apply to the council accordingly." Land used or required by a railway company for the purposes of their undertaking is exempted from the operation of this section. [608]

Under sect. 11 (5) of the Development and Road Improvement Funds Act, 1909 (*t*), when the Road Board or any highway authority were unable to acquire by agreement on reasonable terms any land which they considered necessary for the construction of a new road, they could apply to the Development Commissioners for an order empowering them to acquire such land compulsorily. The powers of the Road Board were transferred to the Minister of Transport by the Ministry of Transport (Road Board Transfer of Powers) Order, 1919 (*a*), and sect. 2 of the Ministry of Transport Act, 1919 (*b*), which Act also

(*p*) 11 Halsbury's Statutes 920.

(*r*) This part of s. 152 is now repealed and replaced by s. 69 of P.H. (London) Act, 1936.

(*s*) 28 Halsbury's Statutes 363.

(*a*) S.R. & O., 1919, No. 1442.

(*q*) *Ibid.*, 921—923.

(*t*) 9 Halsbury's Statutes 214.

(*b*) 3 Halsbury's Statutes 422.

enabled the Minister, under sect. 29 (c), to make rules in relation to matters preliminary to the making of orders or Orders in Council for the compulsory acquisition of lands or easements, the breaking up of roads and the construction of works. The M. of T. (Preliminary Procedure) Rules, 1920 (d), now govern the procedure under which local and other authorities may obtain compulsory powers for the acquisition of land for road improvements and traffic requirements. [609]

Although the Restriction of Ribbon Development Act, 1935, does not extend to the administrative County of London except in so far as applied by an order of the M. of H. under sect. 20 of the Act (c), it should be noticed, in view of the M. of H.'s proposals referred to *post* (pp. 288, 289), that the Minister may by order confer upon the Common Council of the City and upon councils of metropolitan boroughs and the L.C.C. "the like powers as are conferred by sect. 68 of the P.H.A., 1925 (f), upon authorities who are local authorities for the purposes of the P.H. Acts, 1875 to 1932," and any such order may incorporate with adaptations such of the provisions of the Act of 1935, of the P.H. Acts, and of the L.G.A., 1933 (including provisions as to the compulsory acquisition of land), as may be necessary for the purpose of the application of sect. 68 to London.

The power given to the Road Board (now the M. of T.) by sect. 11 of the Development and Road Improvement Funds Act, 1909 (g), to acquire, in addition to the land required for the construction of a new road, land on either side of the proposed road within 220 yards from the middle of the proposed road has been extended by sect. 13 of the Restriction of Ribbon Development Act, 1935 (h), to any highway authority who consider this necessary "for the purposes of the construction or improvement of the road or of preventing the erection of buildings detrimental to the view from the road." A compulsory purchase may be authorised by means of an order made by the highway authority and confirmed by the Minister of Transport, to which sects. 161, 162, 174 and 175 of the L.G.A., 1933 (i), and para. (a) of sect. 170 of that Act are applied. [610]

As regards county bridges, sect. 2 of the Bridges Act, 1803 (k), provides that the responsible authority may rebuild the same either on the old site or situation or on any new one more convenient to the public, contiguous to or within 200 yards of the former one, and a power of purchasing compulsorily land not exceeding in the whole one acre at any one bridge was given without the intervention of a Government department. But in London any compulsory purchase would now be made under the general provision in sect. 65 (2) of L.G.A., 1888 (l), which was not repealed as to London by L.G.A., 1933. [611]

Maintenance and Repair of Streets. *Boroughs responsible for Maintenance.*—By the London Government Act, 1890, the power and duty of maintaining streets in a proper condition of repair and of cleaning and lighting them passed with the ownership of the streets themselves

(c) 3 Halsbury's Statutes 440.

(d) S.R. & O., 1920, No. 200.

(e) 28 Halsbury's Statutes 278.

(f) 13 Halsbury's Statutes 1145. These powers relate to the provision of parking places.

(g) 9 Halsbury's Statutes 214.

(h) 28 Halsbury's Statutes 91.

(i) 26 Halsbury's Statutes 394—396, 401, 402.

(k) 9 Halsbury's Statutes 256.

(l) 10 Halsbury's Statutes 739.

to the respective borough councils in which the streets were situate, with the exception under sect. 6 (2) of the Act (*m*) of streets which remained vested in the L.C.C. as being the roadway or footway of a bridge, embankment or otherwise. In the case of the excepted streets, maintenance and repairs were to be carried out by the borough council in consideration of an annual payment by the L.C.C., but by Art. 8 of and Sched. I. to the Transfer of Powers (London) Order, 1933 (*n*), the "maintenance, repair, cleansing, watering and lighting of any footway or carriageway forming part of any embankment vested in the county council (including that portion of the approach to Westminster Bridge which is situated to the west of the Westminster abutment of that bridge) and of all sewers and drains (other than main sewers) underneath any such embankment or approach, but exclusive of the maintenance and repair of any embankment wall or the maintenance, repair and lighting of any lamp erected on an embankment wall" passed to the council of the borough in which the embankment was situate and to the Common Council within the City (*o*). Ownership of the embankment or of the roadway thereon was not, however, affected, the result of the order as regards such roadways being merely to relieve the L.C.C. of the annual payments made for the upkeep thereof under the London Government Act, 1899, and to throw that cost upon the general rate under Art. 16 of the Order. Except in respect of the portion of the Westminster Bridge Approach referred to, the position as regards roads over bridges or in tunnels remains as before. [612]

Incidental Provisions.—Under sect. 63 of the L.C.C. (General Powers) Act, 1934 (*p*), the L.C.C. and the borough councils may make arrangements with respect to the maintenance, repair, cleansing, watering and lighting of streets and roads on or adjoining the county boundary. [613]

The borough councils are allowed to require to be fenced unenclosed lands bordering streets under sect. 33 of the L.C.C. (General Powers) Act, 1925 (*q*). [614]

Both the L.C.C. and a borough council, under sects. 25, 80 of the P.H. (London) Act, 1936 (*qq*), may stop up streets for the execution of works under Part II. of that Act, and a borough council have power, under sect. 84 of the Metropolis Management Amendment Act, 1862 (*r*), to stop up streets temporarily for the execution of repairs, paving or other works therein. The exercise of these powers is now subject to the co-ordination arrangements to be made by the Minister of Transport under the Closing of Streets for Works Orders, 1927 and 1930, of which particulars are given under the Traffic section, *post*, p. 285. [615]

Paving of Streets.—On the formation of a new street, the borough are entitled to have the street paved in the first instance at the expense of the frontagers under sect. 105 of the Metropolis Management Act, 1855, and sect. 77 of the Amendment Act of 1862 (*rr*), and in the case of an unflagged or partly flagged footpath, to have the same flagged also at the expense of the frontagers (Metropolis Management Amendment

(*m*) 11 Halsbury's Statutes 1228.

(*n*) S.R. & O., 1933, No. 114, as amended by 1934, No. 523.

(*o*) See 26 Halsbury's Statutes 614, 620.

(*p*) 24 & 25 Geo. 5, c. xl.

(*q*) 11 Halsbury's Statutes 1374.

(*qq*) Replacing s. 21 of the Metropolis Management Amendment Act, 1862, and in part s. 84 of that Act; 11 Halsbury's Statutes 970, 988.

(*r*) 11 Halsbury's Statutes 988.

(*rr*) *Ibid.*, 909, 986.

Act, 1890, sect. 3; L.C.C. (General Powers) Act, 1911, sect. 14 (s)). Once the streets have been paved and the pavements flagged at the expense of the frontagers, the duty of keeping them in repair and of repaving and reflagging when necessary falls upon the borough (ss). The powers of the borough councils in the matter of street paving are, by virtue of the above-mentioned Acts and of the Metropolitan Paving Act, 1817 (t), of a very extensive character, but they are also placed under strict obligations in the matter (notably by sects. 7 to 9 of the Act of 1817), and occupiers of dwelling-houses may, under sect. 6, require the borough council to repair defective pavements. [616]

Metropolitan Paving Committee. The common interests of the boroughs in the matter of paving and the necessity of common action in the selection of materials suitable for modern paving led the Westminster City Council, in 1903, to summon a conference of London boroughs to consider the question. The result of this conference was the formation of the Metropolitan Paving Committee, which has its offices at the Westminster City Hall, and which is composed of representatives of all the London boroughs. With the exception of a short period during the War, the committee have continued their deliberations from year to year since their foundation and have issued twenty-nine annual reports, which are of great importance from a technical standpoint. No attempt is made to encroach upon the powers and duties of the borough councils in regard to the paving of streets in their respective areas, and the committee limit their activities to collating and circulating particulars of road pavings carried out and of the results of the various methods and materials employed. The reports contain statistics of the work done and comments on questions germane to paving and relate the measures adopted to improve and strengthen roadways, and to cope with the constant increase of traffic. The expenses of the committee are limited to £200 per annum and are met by contributions from the several councils represented, on the basis of rateable value. [617]

"New Streets" and Paving Charges. Under sect. 105 of the Metropolitan Management Act, 1855 (u), when a new street is paved "the owners of the houses forming such street shall on demand pay to such vestry or board (w) the amount of the estimated expenses of providing and laying such pavement," and such amount is to be determined by the surveyor for the time being of the council.

The Act contains no definition of "new street," but this is given in sect. 112 of the amending Act of 1862 (w) as applying to and including "all streets hereafter to be formed or laid out, and a part of any such street, and also all streets the maintenance of the paving and roadway whereof had not, previously to the passing of this Act, been taken into charge and assumed by the commissioners, trustees, surveyors, or other authorities having control of the pavements or high-ways . . . and also all streets partly formed or laid out."

The Private Street Works Act, 1892 (x), does not extend to London, but the position and liability of a frontager on a new street in London does not differ very materially from that under the Act of 1892 of a frontager upon a new street outside London. Under the Metropolitan

(s) 11 Halsbury's Statutes 1014, 1215.

(ss) Act of 1855, s. 98; 11 Halsbury's Statutes 908.

(t) 11 Halsbury's Statutes 838.

(u) *Ibid.*, 909.

(w) Now the borough council.

(x) 11 Halsbury's Statutes 963.

(y) 9 Halsbury's Statutes 163.

Management Acts, the fact whether or not there has been a dedication of the way to the public is not material in considering whether a road is a new street for the purpose of the recovery of paving charges (*St. Mary, Islington, v. Barrett (y)*). Nor is it necessary that the street in question should be a thoroughfare (*Dodd v. St. Pancras Vestry (z)*). A country lane or an ancient highway repairable by the parish may become a new street by the erection of buildings thereon (*a*).

The general principles governing decisions as to whether a street can be a new street for the purpose of making frontagers liable to contribute to the cost of its paving were laid down by JESSEL, M.R., in *Robinson v. Barton Eccles Local Board (b)*—a case outside London—and by BLACKBURN, J., in *Taylor v. Metropolitan Board of Works (c)*. The cases of *L.C.C. v. Dixon (d)*, *Armstrong v. L.C.C. (e)*, *Clerkenwell Vestry v. Edmondson (f)*, and *Hampstead Corporation v. Caunt (g)*, may be referred to for the application of those principles. [618]

Much discussion has arisen as to the extent of work necessary to be done by the local authority in a street in order to take that street out of the definition in sect. 112 of the Act of 1862, and it was finally settled in *Wilson v. St. Giles, Camberwell (h)*, that both the footway and the carriageway should be taken over, although, under *St. Giles, Camberwell, v. Hunt (i)*, where permanent footpaths had been once laid down at the expense of the rates, their remaking by the local authority in connection with the paving of the street as a new street cannot be taken into account in assessing upon the frontagers the cost of this operation.

In connection with a street widening outside London, it was held by the Court of Appeal that, where a road repairable by the inhabitants at large had been widened by the filling up and inclusion therein of a ditch running alongside which could not, before being filled up, be used for the purposes of the highway, the road could not be treated as a road consisting partly of a highway and partly of added roadway, so as to constitute a street of which part only was repairable by the inhabitants at large, and that, accordingly, a frontager was not liable to be assessed to the cost of filling the ditch and incorporating the ground into the roadway (*k*). [619]

Sect. 3 of the Metropolis Management Amendment Act, 1890 (*l*), enables borough councils to repair any carriage road within their jurisdiction which has been used for not less than 6 months for public traffic and has not become repairable by them, and to apportion and recover the cost from the frontagers as if the road were a new street.

Sect. 1 of the Metropolis Management Act, 1862, Amendment Act, 1890 (*m*), provides that, in case any footway, or part of a footway, laid

(y) (1874), 2 L. R. 9 Q. B. 278; 26 Digest 276, 139.

(z) (1869), 34 J. P. 517; 26 Digest 494, 2034.

(a) *St. Giles, Camberwell, v. Crystal Palace Co.*, [1892] 2 Q. B. 33; 26 Digest 278, 153; *Allen v. Fulham Vestry*, [1899] 1 Q. B. 681; 26 Digest 278, 156.

(b) (1882), L. R. 21 Ch. D. 621 at p. 632; 26 Digest 269, 36.

(c) (1867), L. R. 2 Q. B. 213, at p. 221; 26 Digest 510, 2154.

(d) [1899] 1 Q. B. 496; 26 Digest 511, 2155.

(e) [1900] 1 Q. B. 416; 26 Digest 274, 124.

(f) [1902] 1 K. B. 336; 26 Digest 279, 161.

(g) [1903] 2 K. B. 1; 26 Digest 499, 2076.

(h) [1892] 1 Q. B. 1; 26 Digest 276, 141.

(i) (1887), 56 L. J. (M. C.) 65; 26 Digest 490, 2008.

(k) *Charley Corp. v. Nightingale*, [1907] 2 K. B. 637; 26 Digest 315, 472.

(l) 11 Halsbury's Statutes 1014.

(m) *Ibid.*, 1012.

out at the passing of the Act shall have been repaired by a public body, but such footway or any part thereof shall not have been flagged, or shall have been only partially flagged, the borough council may recover from the frontagers the cost of flagging when it is decided to carry out that work, and in such a case the owners of land may be charged in a less proportion than owners of house property. [620]

Sect. 5 of the Private Street Works Act, 1892 (*n*), directs that in that Act "words referring to paving, metalling and flagging shall be construed as including macadamising, asphaltting, gravelling, kerbing, and every method of making a carriageway or footway." Sect. 105 of the Metropolis Management Act, 1855 (*o*), merely provides that a new street must be paved to the satisfaction of the borough council. [621]

Streets not repairable by Borough. The powers of borough councils to meet expenditure in respect of paving under the above Acts were limited to streets for which the boroughs were responsible, viz., streets repairable by the inhabitants at large. By sect. 34 of the L.C.C. (General Powers) Act, 1925 (*p*), borough councils were enabled to contribute to or bear out of the general rate the cost of the paving of streets within their boundaries which are not repairable by the inhabitants at large, and it is now accordingly possible for a council to mitigate, in suitable cases, the hardships which would result to frontagers from the strict application of the provisions of the Paving Act of 1817, and of the Metropolis Management Acts. [622]

The Crown Estate. The streets on the Crown Estate are paved, repaired and maintained by the Crown Estate Paving Commissioners under the Crown Estate Paving Act, 1851, and in certain cases, on the conditions expressed in that Act, the work is done by the local borough council against certain payments by the Crown. Sect. 51 of the L.C.C. (General Powers) Act, 1931 (*q*), provided that all rights, powers, duties and obligations of the Crown Estate Paving Commissioners under the Act of 1851 in reference to any land granted or conveyed to the L.C.C. or to a borough council for the widening or improvement of any street or the construction of a new street, and any lands appropriated or used for any such purpose with the consent of the Commissioners, should cease to be exerciseable or to be performed, as from the date on which the grant, conveyance or transfer operated. [623]

Westminster Abbey. The paving of the roads belonging to Westminster Abbey is in the hands of the Abbey authorities and there is no power of acquisition by road authorities of Abbey property in College, Dean and Smith streets, the Sanctuary and Dean's Yard (*r*). [624]

Statutory Undertakers. There are three classes of statutory undertakers who have the power to interfere with roads and break up pavements in London, viz., tramway and trolley vehicle authorities, public utility undertakers such as gas, water, hydraulic power, and electricity concerns, and the General Post Office. A full statement of the rights and duties of these bodies will be found under their respective titles, but it should be remembered that the general law has been frequently altered by the private Acts of the undertakings.

The enactments which authorised the establishment of the services gave the undertakers power to break up streets for the purpose of laying down their installations or mains, and these powers were standardised as regards mains by the Gasworks and the Waterworks Clauses

(*n*) 9 Halsbury's Statutes 195.

(*p*) *Ibid.*, 1375.

(*r*) Metropolitan Paving Act, 1817, s. 146; 11 Halsbury's Statutes 876.

(*o*) 11 Halsbury's Statutes 909.

(*q*) 24 Halsbury's Statutes 270.

Acts of 1847 (s), and the Electric Lighting (Clauses) Act, 1899 (t); as regards tramways by the Tramways Act, 1870 (u), and as regards the General Post Office by the Telegraph Acts of 1863 and 1878 (v). The regulation of the right to break up streets and the powers and duties of the road authority in connection with the exercise of that right were provided for, as regards London, by sects. 109—114 of the Metropolis Management Act, 1855 (w). The right was one which, as given, could be exercised at any time by the undertakers concerned, but under the Closing of Streets for Works Orders, 1927 and 1930, the undertakers have now to give notice to the Minister of Transport and arrange for the co-ordination of their main-laying works with the repair works of the road authority (see *post*, p. 285). Before breaking up streets, undertakers have to give notice to the road authority, but are not required to obtain consent. The London Hydraulic Power Company, however, are prohibited from laying mains or doing any work in the City streets and bridges without the consent of the City Corporation previously obtained (x). [625]

The situation as regards liability for disturbance of mains by road authorities is somewhat confused in the absence of any enactment of general application. Liability in particular cases may depend upon private Acts. It may be stated broadly, however, that in respect of works carried out under the Metropolis Management Acts, the road authority would not appear to be liable in virtue of the power given to the authority by sect. 98 of the Metropolis Management Act, 1855 (y), to "alter the position of any mains or pipes in or under any street. . . ." The extent of their liability under the section was discussed in *Southwark and Vauxhall Water Co. v. Wandsworth B. of W.* (z). Works executed under Acts which incorporated sect. 61 of the Towns Improvement Clauses Act, 1847 (xx), entail compensation to the undertakers in respect of the disturbance of their mains. Some of the later enabling Acts of public utility undertakings embody the clear obligation of compensation for disturbance by the road authority, notably certain local Acts passed in 1889 and 1906 for the confirmation of Electric Lighting Orders of the Board of Trade. An interesting question affecting the application of the principle of liability for disturbance of mains was raised in *Gas Light & Coke Co. v. St. Mary Abbott's, Kensington Vestry* (a), when LINDLEY, L.J., discussed the matter fully. As regards the position of the Post Office under the Telegraph Acts, 1863 and 1878, reference should be made to *P.M.G. v. Birmingham Corporation* (b). [626]

Pipe Subways. In connection with certain street improvements, the L.C.C. were authorised to construct pipe subways for the housing of undertakers' mains with a view to minimising the evils resulting from the constant breaking up of highways by statutory undertakers. The construction of subways for the purpose was authorised by sect. 17 of the Metropolitan Street Improvements Act, 1872 (c). The council also obtained the L.C.C. (Subways) Act, 1893 (d), the object of which

(s) 8 Halsbury's Statutes 1215; 20 Halsbury's Statutes 186.

(t) 7 Halsbury's Statutes 705.

(u) 20 Halsbury's Statutes 6.

(v) 19 Halsbury's Statutes 219, 261.

(w) 11 Halsbury's Statutes 911—914.

(x) London Hydraulic Power Company Act, 1884 (47 & 48 Vict., c. lxxii.) ss. 6, 7.

(y) 11 Halsbury's Statutes 908.

(z) [1898] 2 Ch. 603; 26 Digest 488, 1997.

(xx) 13 Halsbury's Statutes 550.

(a) (1885), 15 Q. B. D. 1; 26 Digest 432, 1508.

(b) [1936] 1 K. B. 66; Digest (Supp.).

(c) 35 & 36 Vict., c. cxlii., s. 17.

(d) 56 & 57 Vict., c. ccii.

was to compel undertakers to use the council's subways for their pipes and mains.

There was much opposition from undertakers to the use of the subways; the result being that there are still in London rather less than 20 streets which possess pipe subways, and that in connection with one of the latest Acts of importance for road improvement in London (e), a proposed clause in the Bill authorising the construction of a pipe subway had to be dropped. In 1924, the L.C.C. issued rules, which are still in force, in connection with the use of pipe subways. [627]

Control of Streets.—The control referred to is the control necessary for the maintenance of the streets in an orderly condition for use for their purpose as streets, and does not include the control of traffic, which is dealt with later. This control may be exercised according to the subject-matter, by the L.C.C. or by the borough councils, and the wide powers of the Minister of Transport under the Road Traffic Acts would also seem to allow him to intervene in matters of street control, other than traffic regulations, if such matters are likely to affect traffic. [628]

London County Council Bye-laws. Apart from bye-laws under the London Building Act, 1930, which do not immediately concern street control, the L.C.C. have made a number of bye-laws in connection with streets, dealing with such questions as (1) the removal of refuse from streets (1927); (2) precautions in connection with the demolition of buildings in streets (1929); (3) the regulation of over-head wires (1892 and 1925); and (4) regulations as to lamps, signs and other structures overhanging the public way (1914).

By sect. 14 of the City of London (Various Powers) Act, 1933 (f), the powers of the L.C.C. to make bye-laws for good rule and government and the suppression of nuisances (g) may be exercised within the City by the corporation, but no bye-laws made by the corporation may be inconsistent with those of the county council.

The county council can also, to a certain extent, exercise, through the Shops Act, 1934, and the Children and Young Persons Act, 1933, a measure of control over street trading, which however, in its main features, remains a matter for the boroughs under Part VI. of the L.C.C. (General Powers) Act, 1927 (h). [629]

Naming of Streets and Numbering of Houses. As to the powers of the L.C.C. under the London Building Act, 1930, see *ante*, pp. 185, 186. [630]

Powers of Borough Councils. These councils are the authorities for the exercise of the powers of street control and management under the Metropolitan Paving Act, 1817, the Metropolis Management Acts and the Metropolitan Streets Acts, 1867 to 1903 (i), and notably in connection with the lighting of streets under sects. 90, 130 of the Metropolis Management Act, 1855 (k); their cleansing and watering under sect. 86 of P.H. (London) Act, 1936 (l); construction of cellars,

(e) The Royal Victoria and other Docks Approaches (Improvement) Act, 1929; 19 & 20 Geo. 5, c. xlvii.

(f) 26 Halsbury's Statutes 504.

(g) These are now made under s. 38 of L.C.C. (General Powers) Act, 1934; 27 Halsbury's Statutes 422.

(h) 11 Halsbury's Statutes 1886.

(i) 19 Halsbury's Statutes 154 *et seq.*

(k) 11 Halsbury's Statutes 904, 917.

(l) Replacing s. 20 of P.H. (London) Act, 1891; 11 Halsbury's Statutes 1044.

coal holes and vaults under streets (Metropolis Management Act, 1855, sect. 101 (*m*)); and the erection of hoardings (Metropolis Management Act, 1855, sects. 121—123 (*n*), London Building Act, 1930, sect. 91 (*o*)).

By sect. 113 of the P.H. (London) Act, 1936 (*p*), a borough council and the Common Council of the City may construct public lavatories, ashpits and public sanitary conveniences (other than privies) in streets, wherever they deem them to be required, and for this purpose the sub-soil of any street shall vest in the council, unless it is part of a bridge or the approaches to a bridge of the L.C.C. or of the Common Council. [631]

Police.—In practice the police are responsible for maintaining the free flow of London traffic as a whole and for keeping the streets available for that purpose. It is their duty also to enforce the various traffic laws which are designed to preserve the public safety and to secure free circulation of traffic. See under "Traffic," *post*. The control of dogs was given to the police by sect. 18 of the Metropolitan Streets Act, 1867 (*q*); and sect. 1 of the amending Act of 1903 (*r*) enabled the commissioners of the metropolitan and city police to make regulations concerning street collections. [632]

Minister of Transport. Under sect. 10 of and the Third Schedule to the London Traffic Act, 1924 (*s*), the Minister was authorised to make regulations governing a number of matters of street management likely to affect traffic (for particulars of which, see *post*, p. 288), and regulations as regards street advertising, the carrying of exceptional loads and the collection of refuse were embodied in the London Traffic (Miscellaneous Provisions) Provisional Rules and Orders, 1934. The Minister also issued in 1928 a draft statutory rule and order dealing with obstructions in streets and making the erection or alteration of street refuges, standards, lavatories, etc., in the carriageway subject to the approval of the Minister, but this does not seem so far to have been issued as a S.R. & O. and the control of such matters remains with the borough councils. [633]

Road Drains and Sewers.—In order to prevent misconception as to the use of the words "drain" and "sewer," it should be mentioned that they are here used in the sense of the definitions of these terms occurring in sect. 250 of the Metropolis Management Act, 1855 (*t*), the effect of which is that "drain" means and includes a drain used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating with a cesspool or other like receptacle for drainage or with a sewer, and "sewer" means and includes sewers and drains of every description except drains to which the definition of "drain" applies.

The word "sewer" is accordingly used in this division to cover all public installations for the carriage of drainage and sewage. [634]

In London, these installations are divided into two classes, viz., (1) main sewers, and (2) local sewers.

The main sewers, which were those specified in sched. D to the

(*m*) 11 Halsbury's Statutes 909.

(*n*) *Ibid.*, 915—917.

(*o*) 23 Halsbury's Statutes 206.

(*p*) Replacing P.H. (London) Act, 1891, s. 44; 11 Halsbury's Statutes 1052.

(*q*) 19 Halsbury's Statutes 160.

(*r*) *Ibid.*, 160.

(*s*) *Ibid.*, 183, 190.

(*t*) 11 Halsbury's Statutes 946, 947. These definitions are now replaced by those in s. 81 of P.H. (London) Act, 1936, in which improvements in drafting have been made.

Act of 1855 (*u*), and such other sewers as have since been built as or declared to be main sewers, are vested in and exclusively controlled by the L.C.C., whether situate in the City or in any other part of London.

The local sewers, which comprise all public sewers not classed as main sewers, are under the control (1) in the City, of the Common Council as successors of the old City Commissioners of Sewers, under the City of London Sewers Act, 1897 (*v*); (2) in the boroughs, of the borough councils as successors of the old vestries and district boards.

Closely connected with the main drainage of London are the arrangements for flood prevention which are under the control of the L.C.C., under the Thames River (Prevention of Floods) Acts, 1879 to 1929 (*a*). [635]

The effect of the Act of 1855 was to place the responsibility for the construction and maintenance of public sewers upon the public authorities and to make the cost a charge upon the rates, the obligations of private individuals being limited to their own private drains, except in cases coming under sect. 80 of the Act (*b*), when a contribution might be imposed by the borough council in respect of sewers constructed by any person or body other than commissioners of sewers, and in cases under sect. 52 of the Act of 1862 (*c*), which provides that where a new sewer is constructed in a new street, or for the drainage of a house erected after 1855, the cost of its construction shall be defrayed by the frontagers. The obligations of private individuals in respect of the sanitary accommodation to be provided in buildings and of the connection of this accommodation with public sewers are specified in various drainage bye-laws made by the L.C.C., notably those of October 30, 1900 (known as the "series of 1901"), of July 21, 1903, July 14, 1911, October 28, 1928, May 20, 1930, and March 6, 1934. In future, such bye-laws will be made under sect. 84 of the P.H. (London) Act, 1936, subject to confirmation by the M. of H. under sect. 276 of the Act. [636]

As regards the construction of public sewers, sect. 27 of the P.H. (London) Act, 1936 (*d*), prohibits the construction, either within or outside the county, by a borough council or by any other body having control of sewers within the county, of a sewer without the previous approval of the L.C.C. Under a bye-law of 1856, made by the Metropolitan Board of Works, which has not been altered by the L.C.C., the plans must be approved, and borough councils can only connect their sewers to a main sewer after giving three clear days' notice to the L.C.C. and effecting the junction to the satisfaction of the L.C.C. Certain districts adjoining London have been granted by various local Acts the right to use the metropolitan main sewers. [637]

Powers and Duties of L.C.C.—The main enactment in the matter is now contained in sect. 28 of P.H. (London) Act, 1936 (*e*), which requires the council to construct such sewers and works (including deodorising works), as they think necessary for securing the effective sewerage and drainage of London, and for preventing sewerage of or

(u) 11 Halsbury's Statutes 951. Now repealed by P.H. (London) Act, 1936.

(v) 60 & 61 Vict., c. cxxxiii.

(a) 20 Halsbury's Statutes 325, 343, 344, 347, 358.

(b) 11 Halsbury's Statutes 901. Now replaced by s. 54 of P.H. (London) Act, 1936.

(c) 11 Halsbury's Statutes 976. Replaced by s. 23 of P.H. (London) Act, 1936.

(d) Replacing Metropolis Management Act, 1855, s. 69, Metropolis Management Amendment Act, 1862, s. 56; 11 Halsbury's Statutes 896, 979.

(e) Based on s. 135 of Metropolis Management Act, 1855; 11 Halsbury's Statutes 917.

within the county from passing into the River Thames in or near the county. For these purposes, the council have power to carry any sewer or work through, across or under any street or place laid out as, or intended for, a street, or through or under any cellar or vault situate under any street, and into, through or under any land whatsoever, and whether the street, etc., or land is within or beyond the county, subject to compensation under sect. 28 (2) of the Act, and sect. 225 of the Metropolis Management Act, 1855 (f), as applied by sect. 75 of and Part I. of Sched. II. to the Act of 1936. The L.C.C. are under the obligation to cause their sewers to be constructed, covered and kept so as not to be a nuisance or injurious to health and to be properly cleared, cleansed and emptied (sect. 81). The council have power, under sect. 28 (2) (b), to construct a work "through, along, over or under the bed, soil and banks or shores" of the River Thames, subject, however, to the approval of the Board of Trade, the Port of London Authority and the Lee Conservancy, as the case may be, under sect. 29 of the Act. In connection with local drainage, sect. 36 of the Act of 1936 (g) enables the council, where a street or line of street is situate in two or more boroughs, or a street is in one borough and the buildings are in another, to order that the street or line of street should for the purposes of sewerage or drainage be placed under the exclusive management of one authority only. [638]

Powers and Duties of Borough Councils.—These councils have, within their own area, or any area placed under their sole control by the L.C.C., practically the same duties and powers under the Metropolis Management Acts, in regard to local drains and sewers, as the L.C.C. have in connection with main sewers, but as already noted, sect. 27 of the P.H. (London) Act, 1936, prohibits the construction of a new sewer by a borough council except with the previous approval of the L.C.C. An approval of the L.C.C. is also required when a borough council propose to alter plans already approved but the L.C.C. have no power, under sect. 138 of the Metropolis Management Act, 1855 (h), to order any borough to make a new sewer (i). [639]

Reference has been made *ante*, p. 277, to the limited classes of cases in which the cost of the construction of a new sewer may be charged on owners of streets or houses.

But when a borough council proceed with sewer constructions or alterations, they cannot recover from owners the expense of work on private drains rendered necessary by their action, even, apparently, when it is shown that the private drains which have had to be altered were inadequate (k).

A borough council have power, under sect. 16 of the P.H. (London) Act, 1936 (l), to transfer to the L.C.C., with the county council's consent, their functions as to sewers in their borough. [640]

As regards works outside London, by sect. 17 (2) of the P.H. (London) Act, 1936 (m), no such work (unless it be for continuing or

(f) 11 Halsbury's Statutes 636.

(g) Replacing in part Metropolis Management Act, 1855, s. 140, and Metropolis Management Amendment Act, 1862, s. 86; 11 Halsbury's Statutes 920, 988.

(h) 11 Halsbury's Statutes 919. Replaced by s. 38 of P.H. (London) Act, 1936.

(i) *R. v. St. George's, Hanover Square*, [1895] 2 Q. B. 275.

(k) *St. Martin-in-the-Fields Vestry v. Ward*, [1897] 1 Q. B. 40; 41 Digest 26, 204.

(l) Replacing Metropolis Management Act, 1855, s. 89, Metropolis Management Amendment Act, 1862, s. 28; 11 Halsbury's Statutes 904, 971.

(m) Replacing Metropolis Management Amendment Act, 1862, s. 58; 11 Halsbury's Statutes 979.

forming part of a work within the borough), may be executed without the consent of the L.C.C. and of the local authority within whose area any part of the work will be, but if the latter refuse, there is an appeal to the Secretary of State.

As regards streets coming under the Crown Estate Paving Act, 1851, they are protected by sect. 240 of the Metropolis Management Act, 1855 (n), which is applied by sect. 75 of and Part I. of Sched. II. to the P.H. (London) Act, 1936.

By sect. 25 of the Act of 1936, borough councils are given power to close or stop up streets for the purpose of executing sewerage works, provided that they give notice of their intention to the council of every contiguous borough. But the exercise of these powers would now be subject to the sanction of the Minister of Transport under the Closing of Streets for Works Orders, 1927 and 1930 (*post*, p. 285). [641]

Road Development of London.—The rapid development of mechanical transport, with the accompanying growth of the population of the Metropolis, has led to problems of street development which the present administrative machinery has hitherto been unable to solve adequately. Some far-sighted schemes which in their original conception would have greatly eased the traffic problem have been narrowed down through lack of agreement between the authorities concerned and between the authorities and the owners of property. Moreover there has not yet been a scheme which deals with the problems of London streets and traffic as a whole.

The development of London in the early nineteenth century into something more than an agglomeration of independent parishes led to the creation of the Metropolitan Board of Works, who were intended to co-ordinate and direct the road functions of the parish authorities and, if necessary, to take action independently of them. The Board were established by the Metropolis Management Act, 1855, with the powers indicated *ante*, at p. 266. To them are due such improvements in the means of communication as the construction of the Embankment (1870-74), Holborn Viaduct (1871), Shaftesbury Avenue (1886) and Charing Cross Road (1887). On the passing of the L.G.A., 1888, the duties and powers of the Board were transferred to the L.C.C., who were responsible for the widening of the Strand and the construction of Kingsway and Aldwych.

All these improvements, however, although valuable in themselves, have merely facilitated the movement of traffic from one particular point in London to another. They were not part of any plan of road development for London as a whole. Up to the present, in fact, there has been no sufficiently powerful authority to visualise London as a whole and to plan adequately for the needs of its people. [642]

The Final Report of the Royal Commission on Transport contains this passage (o) :

"Speaking generally, there is no direction in which such a lack of vision has been evident as in the failure to cope with the great increase in the volume and speed of modern traffic in most of the great cities. This neglect is even more striking now provision for further development in the future is considered. The case of London is, of course, the outstanding example. This is the more to be regretted when we remember that, particularly during the last decade, there has been in London a vast amount of rebuilding in important areas.

"To regulate and co-ordinate existing traffic, to prohibit the increase of licensed vehicles on particular routes, and similar measures, are quite inadequate to deal with the problem. So far as London is concerned, the London Traffic Act, 1924,

(n) 11 Halsbury's Statutes 948.

(o) Cmd. 3751 of 1931, pp. 60-61.

which made those experiments possible, has not succeeded in solving the problem. It is clear that the object of those improvements is to fit the traffic to the streets and not the streets to the traffic. The problem is an immense one, but we are certain that it has to be faced—and the sooner this is done the better. Instead of restricting traffic to the existing street accommodation, exactly the reverse is the aim which should be kept in view. The street area should be planned to accommodate not only existing but possible future increases in the volume of traffic."

The Royal Commission made no special recommendations as regards London. They merely noted:

"From a national point of view, the fact that a central department of Government is directly concerned with highways is of the greatest importance, since it is by this means alone that general policy can be directed on national lines, and we believe that it is only on these lines that the best result can be obtained."—(p. 124, xxiii.) [643]

The Minister of Transport now has a greater power to administer and plan the street development of London. Reference has already been made to the London Survey and some of the difficulties connected with it (*ante*, p. 266). The history of the Charing Cross Bridge controversy and the plan of the L.C.C. to re-build Waterloo Bridge afford further examples of the difficulties to be surmounted.

In 1930 the L.C.C. promoted a Bill providing for the construction of a road bridge, 95 feet wide, at Charing Cross, for the removal of Charing Cross Station to the south of the river, and for clearance and road developments in Lambeth and at Charing Cross. The Select Committee to which the Bill was referred rejected it on the ground that the placing of the station on the south side would "stop the development of Lambeth." They recommended that the authorities concerned should endeavour to put forward an agreed scheme. The L.C.C. accordingly appointed an advisory committee of sixteen members, representing the interests concerned, under the chairmanship of Sir Leslie Scott (now Lord Justice Scott). The committee were unable to agree. Only nine of the sixteen members signed the report submitted by the chairman, and five dissenting statements were issued. The L.C.C. then decided not to proceed further with the Charing Cross project and to find in Waterloo Bridge the requisite crossing for north-south traffic. A first decision to build a new bridge was dropped in face of opposition, in favour of a decision to recondition the old one and widen its roadway by corbelling out. A new council, elected in November, 1934, reversed this decision and reverted to the decision to demolish the old bridge and build a new one, but the House of Commons refused to the council leave to borrow to carry out the work, and this entailed the refusal of the Minister of Transport to make any contribution out of the Road Fund. The Minister then came forward with proposals for the revival of a bridge scheme at Charing Cross. The L.C.C. disclaimed all further interest in Charing Cross and announced their intention of releasing the area south of the river over which they had secured powers in connection with the scheme of 1930. The Ministry pressed for reconsideration but the council were obdurate, although they agreed to refrain for a time from proceeding to release the land pending a reference of the question to the London and Home Counties Traffic Advisory Committee. The Committee issued their Report in August, 1936, recommending the construction of a road bridge at Charing Cross.

The House of Commons has now sanctioned borrowing by the council for their Waterloo Bridge scheme and this may be followed by a grant from the Ministry. [644]

The City Corporation are considering how best they can deal with the peculiar problems of City roads and traffic. It has lately been decided that a town planning scheme should be proposed and a complete survey made of the City, indicating re-development of buildings and of roads. It is calculated that if the rate of development of the last thirty years is maintained, the whole of the City will be rebuilt in about 125 years. Exclusive of historical buildings, very little City property is over 85 years old. The special road and traffic problems of the City were dealt with exhaustively in a report presented by the City Engineer in June, 1936:

"The difficulties and defects which appear to beset the City in its traffic may be partly due to inaccurate analysis. Traditionally and actually, the City is a trading centre. Facilities for access to it are essential to its life, but not for passing through it, the provision for which might be destructive and disintegrating to the functions of the area. Hence the solution might be rather in fostering the provision of ways to circumvent rather than to penetrate the City, while not neglecting to improve internal circulation." [645]

The development of certain European cities which are comparable in age and size with London, indicates the results achieved by general large-scale planning. This is seen particularly clearly in the provision of concentric means of communication. Paris and Moscow have their boulevards and Vienna its Ringstrasse and Gürtelstrasse built on the sites of encircling walls and fortifications, and these have served as the basis for really intelligent street development. A ten-year scheme for the complete rebuilding of Moscow, conforming generally to a spider's web plan, was inaugurated by the Moscow City Soviet in 1935 (p). London has made a start with its North Circular Road and North Orbital Road, but the circles are far from completion, and their lack leads to increased congestion in the central streets.

An adequate street development programme, designed for future as well as present needs, is one of the most urgent necessities which face the local government authorities in London. [646]

II.—ROAD TRAFFIC

It is not intended to deal in this part with the legislation of general application to all users of the highway, whether in London or elsewhere, but merely with legislation and regulations of special application to London.

The main Acts of Parliament now regulating London traffic are: the Metropolitan Police Act, 1839; the Metropolitan Streets Act, 1867; the City of London (Street Traffic) Act, 1909; the London Traffic Act, 1924 (q); the Road Traffic Acts, 1930 and 1934 (r); the Road and Rail Traffic Act, 1933 (s); and the London Passenger Transport Acts, 1933 to 1936 (t), which are dealt with *post*, on pp. 293—297. [647]

A "public service vehicle" is defined in sect. 121 of the Road Traffic Act, 1930 (u), as "a motor vehicle used for carrying passengers for hire or reward other than a vehicle which is a contract carriage within the meaning of this Act adapted to carry less than eight passengers or a tramcar or a trolley vehicle." [648]

(p) See TOWN AND COUNTRY PLANNING, for March 1936.

(q) 19 Halsbury's Statutes 172.

(r) 28 Halsbury's Statutes 607; 27 Halsbury's Statutes 534.

(s) 26 Halsbury's Statutes 870.

(t) *Ibid.*, 744; 27 Halsbury's Statutes 876; 28 Halsbury's Statutes 354, 365.

(u) 28 Halsbury's Statutes 686.

Authorities.—The police are responsible for the immediate control of traffic. All statutory rules and orders are made by the Minister of Transport by virtue of the wide powers conferred on him by the 1924 and subsequent Acts. Before making regulations under the London Traffic Act, 1924, the Minister is required to refer the matter to the London and Home Counties Traffic Advisory Committee for their advice or report. Transport operation by public service vehicles and heavy goods vehicles is controlled by the Traffic Commissioner for the Metropolitan Area, but he is required to consult the police before approving omnibus and coach routes. The operation and licensing of cabs and the appointment of cab ranks are dealt with entirely by the police. [649]

London and Home Counties Traffic Advisory Committee.—This committee, which was created by the London Traffic Act, 1924, to give advice and assistance to the Minister of Transport in facilitating and improving the regulation of traffic in and near London, was reconstituted by the London Passenger Transport Act, 1933, and now consists of 40 members appointed as follows: 2 members represent the Government departments; 23 represent local authorities; 3 represent the Metropolitan and City Police, etc.; 2 members represent the London Passenger Transport Board; and 2 members the Railway Companies. Five members represent the interests of Labour engaged in transport industry, and 3 members represent users of vehicles, and the taxi-cab industry.

By sect. 59 of the Act of 1933 (v), the committee are entrusted with advising the Minister on any matters relating to traffic in the London Traffic Area which should be brought to the Minister's notice; with making representations to the London Passenger Transport Board as to the services and facilities provided by the Board; and with advising the Minister upon any matters arising either under the Act of 1924 or the Act of 1933 which are referred by the Minister. The Second Schedule to the Act of 1924 (w) gives a comprehensive list of matters on which the committee's advice may be sought by the Minister.

The committee may also hold public enquiries on their own account or at the request of the Minister (Act of 1924, sect. 3). [650]

At first, the committee used to report separately on matters upon which it was their duty to report under the Act and on matters submitted to them specially by the Minister, but since their reorganisation by the Act of 1933 they have reported under four heads only, viz.: (i.) Road and Bridge Improvement Works; (ii.) Traffic Control; (iii.) Road Safety; and (iv.) Passenger Transport.

The functions of the committee are purely advisory, but the Minister is under statutory obligation to submit to them his proposals in respect of the following matters before giving a decision, viz.:

- (1) The closing of streets for works, see sect. 4 (2) of the Act of 1924;
- (2) Regulations to facilitate traffic in the London Traffic Area (one-way streets, roundabouts, removal of obstructions, parking places, etc.), see Act of 1924, sect. 10 (4);
- (3) Directions to Traffic Commissioners having jurisdiction in the London Traffic Area, see Road Traffic Act, 1930, sect. 98 (4) (x);
- (4) Whether roads are or are not to be deemed in a built up area, see sect. 1 (4) (b) of Road Traffic Act, 1934 (a);

(v) 26 Halsbury's Statutes 799.

(x) 23 Halsbury's Statutes 675.

(w) 19 Halsbury's Statutes 189.

(a) 27 Halsbury's Statutes 536.

- (5) Restrictions on number of passenger vehicles using certain streets, see sect. 62 (2) of London Passenger Transport Act, 1933 (b);
- (6) Matters affecting the London Traffic Area which, under the Road and Rail Traffic Act, 1933, should be referred to the Transport Advisory Council if they arose outside the area, see sect. 46 (6) of Road and Rail Traffic Act, 1933 (c).

As regards matters affecting passenger services and facilities in London, the committee may hold joint meetings with the London Passenger Transport Board under sect. 59 (2) of the London Passenger Transport Act of 1933.

The committee fulfil, as regards the London Traffic Area, the functions and duties of the Transport Advisory Council created by sect. 46 of the Road and Rail Traffic Act, 1933 (d), in replacement of the Roads Advisory Committee set up by the Ministry of Transport Act, 1919, and now abolished. [651]

Metropolitan Traffic Commissioner.—Traffic Commissioners were created by sect. 63 of the Road Traffic Act, 1930 (e), and as regards the Metropolitan Traffic Area, sect. 98 (8) of the Act provided that there should be one Traffic Commissioner only, who, under sub-sect. (5), would hold office for a period of 8 years and be re-eligible, but the term of office was extended to 7 years by the London Passenger Transport Act of 1933. Under sect. 51 (4) of that Act the duties of the Commissioner may include the grant of licences not only for public service and goods service vehicles, but for tramcars, light railway cars and trolley vehicles, and he may prescribe conditions to be attached to a road service licence with respect to routes, stopping places and terminal points, subject to consultation with the Police Commissioner and appeal to the Minister (sect. 51 (6)). He may grant a certificate of fitness of a vehicle for the purpose of the service or of conformity to an approved type under sect. 68 of the Road Traffic Act, 1930 (f). He receives, under sect. 70 of the Act, notices of failure in, or damage to or alterations of vehicles licensed by him. He also backs licences issued by commissioners outside the metropolitan area to public service vehicles using parts of the said area, but under sect. 28 of the Road Traffic Act, 1934 (g), no backing is necessary, if there is no setting down or picking up in the Metropolitan Area, or if a stop for other purposes does not exceed 15 minutes. [652]

There is an appeal to the Minister under sect. 81 of the Road Traffic Act, 1930 (h), against decisions of the Traffic Commissioners with regard to licences and certificates of fitness for road service vehicles, and against conditions attached by the commissioners, but reference should be made to the case of *R. v. Minister of Transport, ex parte Upminster Services* (i), as regards the limitation of the Minister's jurisdiction.

In the matter of licences for goods vehicles, regulated by the Road and Rail Traffic Act, 1933, the appeal lies under sect. 15 (k) to the Tribunal of Appeal created under the Act, whose decisions are final and binding on the Traffic Commissioner of the metropolitan area, under sects. 4 (2), 15 (14), of the Act. [653]

Commissioners of Police.—Apart from his general duties in regard

(b) 26 Halsbury's Statutes 803.

(d) *Ibid.*

(f) *Ibid.*, 659.

(h) 23 Halsbury's Statutes 666.

(i) [1934] 1 K. B. 277; Digest (Supp.).

(c) *Ibid.*, 910.

(e) 23 Halsbury's Statutes 656.

(g) 27 Halsbury's Statutes 556.

(k) 26 Halsbury's Statutes 885.

to the regulation and control of traffic the Commissioner of Police of the Metropolis has wide powers under sect. 52 of the Metropolitan Police Act, 1839 (*l*), to make regulations and give directions for preventing obstruction in time of public processions, etc., and in any case where the streets may be thronged or liable to be obstructed. It is under this Act that regulations are made for the regulation and control of traffic during ceremonial occasions, race meetings, sports functions, etc., and that directions are given for the control of theatre traffic, etc., and for the diversion of traffic on account of roadwork and other emergency occasions. There are also powers under the Metropolitan Streets Act, 1867 (*ll*) (which also applies to the City), to designate certain streets to be within the special limits of that Act and to make regulations as to the route to be observed by traffic within those streets with power to prevent other vehicles from coming into the streets. The Commissioner licenses all drivers and conductors of public service vehicles, tramcars and trolley vehicles residing in the Metropolitan Traffic Area, as well as cabs and cab drivers. Cab ranks are appointed by him under the London Hackney Carriages Act, 1850 (*m*). [654]

Traffic Areas.—There are four distinct areas which are referred to in connection with London Traffic Regulations: (1) The London Traffic Area; (2) The Metropolitan Traffic Area; (3) The London Passenger Transport Area; and (4) The Special Area. [655]

The London Traffic Area is described in the First Schedule to the London Traffic Act, 1924 (*n*). It includes the administrative counties of London (including the City) and Middlesex, the county boroughs of Croydon, East Ham and West Ham and certain scheduled parts of Buckingham, Essex, Hertford, Kent and Surrey. [656]

The Metropolitan Traffic Area was described in the Third Schedule to the Road Traffic Act, 1930 (*o*), as including the metropolitan police district and the City of London, but it was enlarged by sect. 50 of the London Passenger Transport Act, 1933 (*p*), to include (1) the London Passenger Transport Area created by that Act; (2) such parts of the London Traffic Area as lie outside the London Passenger Transport Area; and (3) such parts of the administrative county of Hertford, and of the boroughs of Chepping Wycombe, Dunstable and Luton and of the urban districts of Wrotham, East Grinstead and Horsham as also lie outside the London Passenger Transport Area. [657]

The London Passenger Transport Area is merely described in the Seventh Schedule to the Act of 1933 (*q*) as "the area comprised within the continuous purple line shown on the signed map" deposited with the Bill.

The Special Area, which is also the creation of the London Passenger Transport Act, means so much of the London Passenger Transport Area as lies within the London Traffic Area (see the definition in sect. 107 of the Act (*r*)). [658]

London Traffic Regulations.—The main general regulations affecting road traffic are the same for London as for the remainder of the country, whether they apply to matters affecting the roads themselves, such as the placing of traffic signs or the marking of pedestrian crossings; or to the requisites for the construction or equipment of vehicles for

(*l*) 19 Halsbury's Statutes 118.

(*m*) *Ibid.*, 142.

(*o*) 23 Halsbury's Statutes 692.

(*q*) *Ibid.*, 858.

(*ll*) *Ibid.*, 154.

(*n*) *Ibid.*, 188.

(*p*) 26 Halsbury's Statutes 705.

(*r*) *Ibid.*, 846.

use on the roads; or (with the exceptions introduced by the London Passenger Transport Act) to the licensing of vehicles, whether for private use, or for trade purposes, or as public service vehicles, whether omnibuses or coaches, etc., or for the purpose of haulage services; or to the licensing of drivers for these different classes of vehicles; or to the speed limit of 30 miles an hour in built up areas; or to the requirement of insurance against third-party risk; or to the hours of work of drivers and their periods of rest; or to the respective position and rights of pedestrians, cyclists, mechanically-propelled vehicles and horse-drawn vehicles; or to the recommendations of the Highway Code.

These regulations will be found dealt with in detail under the title **ROAD TRAFFIC.**

The special provisions for the control and regulation of traffic in and near London which were contained in the London Traffic Act, 1924, were altered by Part V. of the London Passenger Transport Act, 1933 (s), which made the Act of 1924 permanent and which, together with it, constitutes the special law applicable to the London area as it exists to-day. [659]

London Traffic Act, 1924.—The Act originally consisted of seventeen sections and three schedules. Of these, sect. 1 (i), dealing with the London and Home Counties Traffic Advisory Committee, was re-cast as mentioned above by the Act of 1933, five other sections were entirely repealed and two more repealed in part. Beyond the unrepealed parts of sect. 1 of the Act, sect. 4 provides for the co-ordination of works of road maintenance and improvement in the London Traffic Area so as to mitigate the congestion of traffic due to the closing of streets for works. It imposes upon every road authority in the area the duty of submitting half-yearly to the Minister of Transport a statement of the works which they propose to execute within a period of six months fixed by the Minister and which are likely to involve the closing to vehicular traffic, to the extent of one-third or more of the width, of the carriage-way. After examination and report by the Advisory Committee, the Minister draws up a scheme prescribing the time and order in which the works are to be commenced and carried out, which scheme, after confirmation, is binding upon the road authorities affected and not subject to appeal.

By the London Traffic (Closing of Streets for Works) Order, 1927 (u), February 1 and August 1 were appointed as the dates for submitting statements, and April 1 and October 1 as the dates of commencement of the six-monthly period for the works, and by the London Traffic (Closing of Streets for Works) (No. 2) Order, 1930 (a), the list was issued of streets, bridges and tunnels in the London Traffic Area to which sect. 4 of the Act should apply. [660]

Statutory Undertakers.—Sect. 4 also provides that statutory undertakers having power to break up streets shall, except as regards emergency works or the making, altering, repairing or disconnecting of service connections, carry out their works involving the breaking up of streets at the same time and in connection with the works of maintenance and improvement to be carried out by the road authority, and shall be supplied with the proposals of the road authority for their guidance and for their representations. Where works have been executed by a road authority under a scheme approved by the Minister, it is not lawful for statutory undertakers to break up, within twelve

(s) 26 Halsbury's Statutes 799.

(u) S.R. & O., 1927, No. 260.

(i) 10 Halsbury's Statutes 172.

(a) S.R. & O., 1930, No. 686.

months of the completion of the work, a street so repaired, unless the previous consent of the Minister has been obtained to such breaking up, and the work is carried out under such conditions as the Minister may impose (*ibid.*).

Sect. 5 of the Act also contains provisions against obstruction by any undertakers through the deposit of excavated matter or the erection of barriers in streets for a longer period than necessary. Police officers who find such obstruction greater or lasting longer than reasonably necessary must report the matter to the road authority, who may order the undertakers to remove the obstruction within twenty-four hours subject to an appeal to the Minister. [661]

Traffic Control by Minister of Transport.—But the main purpose of the Act of 1924 was to provide for road traffic within the London Traffic Area to be dealt with on uniform lines, and to do away with the localised systems which had proved inadequate to meet the requirements of modern developments. For this purpose, wide powers were given to the Minister of Transport by sect. 10 not only of making regulations concerning traffic, but also of suspending and modifying, so long as such regulations remain in force, any provisions of any Act (whether public, general, local or private), or any bye-laws or regulations dealing with the same subject-matter. The exercise of these rather unusual powers is limited to the particular matters set out in the Third Schedule to the Act (*b*), but a new sub-sect. (1) was substituted for sect. 10 (1) of the Act of 1924 by sect. 68 of the London Passenger Transport Act, 1933 (*c*), giving rather wider powers over traffic. [662]

The Advisory Committee must be consulted under sect. 10 (4) of the Act of 1924 before such regulations are made, and, if the regulations would impose new or additional duties upon the police, the regulations must also be referred to the Home Secretary. A breach of the regulations is punishable on summary conviction by a fine not exceeding £20 for a first offence or £50 for a second or subsequent offence and in addition, in the case of a continuing offence, by a fine not exceeding £5 per day for every day during which the breach continues after notice of the offence (sect. 10 (3)).

Local authorities are protected to the extent that the Minister has no power to impose upon them without their consent any obligation to incur expenditure on the improvement of any road or the construction of any new road (see sect. 11). [663]

Inquiries into Accidents.—When an accident occurs on a road, in which the nature or character of the road or of the road surface, or a defect in road materials used, or of the vehicle is in question, the Minister may, under sect. 12 of the London Traffic Act, 1924 (*d*), order an inquiry into the causes of the accident, and if a coroner holds an inquest upon the death of any person in consequence of an accident in which the same matters are in question, he must give notice to the Minister so that the Minister may be represented at the inquest by an officer appointed by him who is given liberty to examine witnesses. The Minister may direct an inquiry to be held into an accident also under sect. 23 of the Road Traffic Act, 1930 (*dd*). [664]

Minister's Expenditure chargeable on Road Fund.—The expenditure incurred by the Minister of Transport and by the Advisory Committee in connection with the administration of the Act is to be defrayed out of the Road Fund to such amount as the Treasury may sanction (sect. 15). [665]

(b) 19 Halsbury's Statutes 100.

(d) 19 Halsbury's Statutes 185.

(c) 26 Halsbury's Statutes 804.

(dd) 23 Halsbury's Statutes 927.

Amendment of London Traffic Act, 1924, by London Passenger Transport Act, 1933.—Part V. of the London Passenger Transport Act, 1933 (c), embodies the amendments of the Act of 1924, which were considered necessary through the constitution of the London Passenger Transport Board and in view of the experience gained since 1924.

After making what remains of the Act of 1924 a permanent Act, and reconstituting the London and Home Counties Traffic Advisory Committee with extended duties and powers (sects. 57—60) as outlined *ante*, on p. 282, sect. 61 regulates the conditions under which persons using vehicles for the conveyance of passengers for hire or reward at separate fares will be allowed to operate their services in the London Special Area. The vehicles must follow a route approved by the Traffic Commissioner, must be such as the Commissioner approves for that route, must take up and set down at such points as he shall specify and on reaching the end of their journey must turn at such places or by such streets as he may direct, and the Minister may give directions to the Commissioner to attach to his approval specified conditions as to the construction of vehicles to be used. Before approving routes lying within the Metropolitan Police District or the City, the Commissioner must consult the Commissioner of Police (sect. 61 (2)). A power of appeal to the Minister is given to a person who has applied for approval, or to the Commissioner of Police, if aggrieved by the decision (sect. 61 (8)). The Traffic Commissioner may also alter an approved route or revoke his approval except as to conditions inserted by direction of the Minister, and a similar right of appeal against such variation or revocation is given to the party aggrieved (sect. 61 (4) (5)). Vehicles used on special occasions for the conveyance of private parties do not come within the section by reason only that members of the party make separate payments, nor does the section apply either to tramcars or trolley vehicles (sect. 61 (7) (8)). Infractions are punishable on summary conviction by fines not exceeding £20 for a first offence or £50 for a second or subsequent offence, but proceedings can only be instituted by the Director of Public Prosecutions, the Traffic Commissioner or a chief officer of police (sect. 61 (6), (9)). [666]

Sect. 62 allows the Minister to regulate the number and frequency of the journeys of vehicles conveying, within the special area, passengers at separate fares, either generally or during particular periods. The Minister may: (1) classify the vehicles according to their class or description or route or to the conditions or purposes of operation; (2) allot a specified number of journeys of specified frequency, or a specified proportion of the aggregate number of journeys permitted, to a particular person or group of persons, or to a particular class of vehicles or to vehicles on particular routes; (3) require persons operating vehicles to submit particulars of the services maintained; and (4) provide for dispensation from or relaxation in special circumstances or on special occasions of limitations imposed by regulations.

The regulations provided for in sect. 62 must, however, be the subject of inquiry by the Advisory Committee, which may be public. Offences against the regulations are punishable on summary conviction by fines not exceeding £20 for a first offence or £50 for a second or subsequent offence, with a further fine not exceeding £5 for every day after conviction during which the offence continues. [667]

Extension of Minister's Power to make Regulations.—As mentioned *ante*, at p. 286, sect. 63 substitutes a new sub-section for sect. 10 (1) of the London Traffic Act, 1924 (*f*). This enlarges the Minister's previous power by allowing him to "make regulations for controlling or regulating vehicular and other traffic on roads within the London Traffic Area, and in particular, but without prejudice to the generality of the foregoing words, for any of the purposes or with respect to any of the matters mentioned in the Third Schedule" to the Act of 1924. Any such regulations may be made to apply: (1) to the area as a whole or to particular parts of it or to particular streets; (2) throughout the day or during particular periods; (3) on special occasions or at special times only; or (4) to vehicles and traffic of any particular class.

For the purposes of (4) the Minister is empowered to classify vehicles and traffic according to weight, motive power, speed, character of load or absence of load, purpose and direction of traffic and, as regards public service vehicles, the nature of the service, the route on which the vehicle is operated and whether it is, for the time being, engaged in carrying passengers or not. [668]

Numerous regulations under the powers of the Acts of 1924 and 1938 have been issued by the Minister in the shape of statutory rules and orders, and provisional statutory rules and orders. The largest number deal with prescribed routes and parking places, but the London Traffic (Miscellaneous Provisions) Consolidation Provisional Regulations, 1984, should be referred to, as they provide a consolidated presentment of the Minister's rulings upon a variety of matters under the Third Schedule to the Act of 1924 and repeal a number of the existing London Traffic Regulations. In these regulations the following matters are dealt with: (1) broken-down vehicles; (2) lighting and guarding of street works; (3) traffic notices; (4) reversing in streets, advertising in streets, and exceptional loads; (5) unhired cabs; (6) collection of refuse; (7) waiting, loading and unloading of vehicles in the Piccadilly Circus and Oxford Street areas; and (8) prohibition of slow moving traffic and of turning in the Oxford Street area.

The London Traffic (Regulation of Traffic in the City of London) Regulations, 1985 (*g*), govern heavy traffic in the City of London.

The Prescribed Routes (Consolidation) Regulations, 1985 (*h*), consolidate the Prescribed Routes Regulations in force, and the London Traffic (Parking Places) Consolidation Regulations, 1985 (*i*), consolidate the regulations as to parking places, whilst the Pedestrian Crossing Places (London Traffic Area) Adaptation Order, 1985 (*k*), and the London Traffic (Pedestrian Crossing Places) (No. 2) Provisional Regulations, 1984, contain the latest rules regarding pedestrian crossing places. [669]

Sect. 20 (2) of the Restriction of Ribbon Development Act, 1935 (*l*), allows the Minister of Health to confer upon the Common Council of the City and upon councils of the metropolitan boroughs and the L.C.C. the powers of a local authority under sect. 68 of the P.H.A., 1925 (*m*), in respect of the provision of parking places, but the L.C.C., whilst approving the conferring of these powers upon the Common Council and

(*f*) 19 Halsbury's Statutes 183.

(*g*) S.R. & O., 1935, No. 96; 28 Halsbury's Statutes 381.

(*h*) S.R. & O., 1935, No. 670.

(*i*) S.R. & O., 1935, No. 1311; 28 Halsbury's Statutes 414.

(*k*) S.R. & O., 1935, No. 623; *ibid.*, 402.

(*l*) 28 Halsbury's Statutes 278.

(*m*) 18 Halsbury's Statutes 1145.

the borough councils, did not consider it advisable that they should be conferred upon the L.C.C. (Minutes, June 30, 1936). The powers, however, cannot be exercised except after consultation with the Minister of Transport.

The Minister of Health also proposed, under sect. 20 (8), to confer upon the L.C.C. the power to require the provision of means of entrance to and egress from any building in respect of which plans have to be submitted to the council, containing a space of not less than 250,000 cubic feet, or being a place of public resort, refreshment house, station for public service vehicles, petrol filling station or garage used in connection with any trade or business. The council accepted these powers (Minutes, June 30, 1936) which, however, cannot be exercised except after consultation with the Minister of Transport and, in case of premises situated in the City, with the City Corporation, and, in the boroughs, with the council of the borough interested. Owners of premises affected are given, by proviso (b) to sect. 20 (8), a right of appeal as under the London Building Act, 1930. [670]

Pedestrian Traffic.—Sect. 10 of and the Third Schedule to the London Traffic Act, 1924 (*mm*), gave the Minister of Transport power to make regulations for, *inter alia*, pedestrian crossings. This power was extended to cover the whole country by sect. 18 in the Road Traffic Act, 1934 (*n*), which makes it an offence for pedestrians to disregard regulations, as sub-sect. (8) reads as follows: "If any person contravenes any of the provisions of a regulation having effect as respects a crossing, he shall in respect of each offence be liable to a fine not exceeding such amount (being five pounds or less) as may be specified by regulations made under this section as the maximum fine in relation to a breach of such regulation."

The principal means adopted from time to time to afford protection to pedestrians crossing the streets include refuges, subways, crossing places and "Belisha beacons," and posts and guard rails at the edge of the pavement. The practice and regulations as regards these are summarised below. [671]

Refuges.—This is probably the oldest method of protection provided for the pedestrian crossing a street, and sect. 108 of the Metropolis Management Act, 1855 (*o*), consecrated the practice of placing refuges in the carriageway by giving formal power to the highway authority to place "posts or other erections in any carriageways so as to make the crossings thereof less dangerous for foot passengers."

Of late years, the location, shape and form of such refuges have engaged the attention not only of the highway authorities and of the police, but also of the London and Home Counties Traffic Advisory Committee and of the Minister of Transport, and the practice has been adopted, before constructing refuges in a permanent form, of installing temporary refuges, sometimes made of wood, so as to test the suitability of the position and of the type proposed.

The highway authority are still under the Metropolis Management Acts, the authority in respect of refuges, and, as in the case of the Camberwell Borough Council in connection with the old parallel street refuges in the Old Kent Road, may presumably refuse to remove refuges which the Traffic Advisory Committee consider to be an obstruction to traffic, but as a matter of fact the views of the Committee and of

(*mm*) 19 Halsbury's Statutes 183, 190.

(*n*) 27 Halsbury's Statutes 549.

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(*o*) 11 Halsbury's Statutes 911.

the Minister as a rule ultimately prevail, as they did in the case referred to (T. A. C. Report, 1931-32, p. 26).

The power given to the Minister by sect. 57 of the Road Traffic Act, 1930 (p), to make grants from the Road Fund towards the "erection, lighting, maintenance, alteration and removal" of street refuges ensures in practice that the views of the Ministry in connection with the matter will be complied with. [672]

The Advisory Committee recommended that guard posts to refuges should be painted black and white in order to render them more conspicuous (T. A. C. Report, 1931-32, p. 26).

Experiments were made for some years with illuminated guard posts on refuges and the Committee came to the conclusion that such guard posts "were serving a useful purpose in conducing to general safety," but they refrained from recommending any particular types and merely advised local authorities who contemplated the adoption of illuminated guard posts to conform to the following standards :

- (1) The colour of the post by day should be white, outlined with black, and during the hours of darkness the post should be illuminated by white flood lighting ;
- (2) The horizontal angle of illumination of the post should be at least 120 degrees and the projected width (*i.e.* the width as seen by a person directly facing the post) of the illuminated surface of the guard post facing approaching traffic should not be less than 5 inches ;
- (3) The post should be illuminated for a vertical length of not less than 2 feet, and the upper edge of the illuminated portion should not be less than 3 feet, and the lower edge not more than 18 inches above the road level ;
- (4) The height of the post should be a minimum of 4 feet above the road level (T. A. C. Report, 1932-33, pp. 27-28).

The Departmental Committee on Traffic Signs in their Report of 1933 endorsed the recommendation of the Advisory Committee (para. 78), but the adoption of illuminated posts remains primarily a matter for the local authority, like the erection of refuges. [673]

Subways.—The provision of subways as crossing places for pedestrians was at first rather restricted by the problems of interference with ownership of the subsoil, and for a long time such subways seem to have been constructed only when specially authorised by Parliament in connection with particular schemes of improvement, or when the local authority came to an agreement with the owner of the subsoil. An important step forward was taken when sect. 8 of the Development and Road Improvement Funds Act, 1909 (g), included the provision of crossing subways for pedestrians among the authorised "road improvements," by declaring that "the expression 'roads' includes . . . subways." Sect. 11 of the Roads Improvement Act, 1925 (r), contains a similar definition.

The powers of road authorities as to subways are now regulated by sect. 55 of the Road Traffic Act, 1930 (s), which allows a borough or urban district council as respects any road in their area (subject, however, in the case of a county road not vested in them to the consent of the county council) and a highway authority as respects any road vested in them, for the purpose of making the crossing of any road less

(p) 23 Halsbury's Statutes 652.

(r) *Ibid.*, 223.

(g) 9 Halsbury's Statutes 212.

(s) 23 Halsbury's Statutes 652.

dangerous for foot passengers, to construct, light, maintain, alter, remove and temporarily close subways under the road for the use of foot passengers.

As the construction of subways for foot passengers is an improvement towards the cost of which the Minister is authorised by sect. 57 (2) of the Act of 1930 to make advances out of the Road Fund, this provision ensures in practice the control of the Ministry and the Advisory Committee over their construction, for few highway authorities would be prepared to bear the cost of a subway without a substantial grant. [674]

Pedestrian Crossings and "Belisha Beacons."—Up to 1934, the provision of foot passenger crossings in the streets of London was governed by sect. 108 of the Metropolis Management Act, 1855 (t), and by sect. 118 of the same Act (u), which enabled the vestries and district boards to appoint and pay crossing sweepers to keep properly cleansed and swept crossings for passengers over the streets and by sect. 10 of the London Traffic Act, 1924 (v).

Sect. 18 of the Road Traffic Act, 1934 (a), placed the control of pedestrian crossings, not only in London but over the whole country, in the hands of the Minister of Transport. Sub-sect. (4) requires the council of every borough, urban district and county, to submit to the Minister, within a period to be determined by him by order under the Act, a scheme for the establishment of pedestrian crossings on the highways within their jurisdiction or a statement of their reasons why such crossings are unnecessary, and, in the latter event, if the Minister is satisfied that crossings ought to be established, he may require the council to submit a scheme. The Minister is given the final decision as to the location and number of crossings in particular roads and has the power of varying schemes whether proposed or approved (sect. 18 (5), (6)). The work in connection with the establishment and marking of the crossings is to be done by the local highway authority in accordance with the scheme approved by the Minister, and if the authority make default in the execution of the work, the Minister may have it executed and recover the cost from the authority as a civil debt (sect. 18 (7)). [675]

The question of a suitable marking of crossings in the carriageway and of the indication of a crossing by some kind of traffic sign on the footpath gave occasion to a good deal of experimental work, but the matter is now regulated by the Traffic Signs (Pedestrian Crossings) (No. 2) Provisional Regulations, 1934, which provide that a pedestrian crossing shall be indicated in the carriageway by lines formed of white or yellow studs, square or circular, having an area of upper surface not less than 12½ square inches (para. 3) or by a line of metal or other permanent material placed in the carriageway (para. 4) and that, except where traffic lights are installed, the crossing shall be indicated from the footpath or point of starting by a globe of "traffic yellow," 12 inches in diameter, mounted on posts not less than 7 feet nor more than 10 feet from the ground, circular in shape and not less than 3 inches in diameter and painted in alternate black and white horizontal bands 12 inches in depth. These poles and globes have become popularly known as "Belisha beacons," from the name of the Minister of Transport who introduced them.

(t) 11 Halsbury's Statutes 911. See also *ante*, p. 289.

(u) *Ibid.*, 914.

(v) 19 Halsbury's Statutes 183.

(a) 27 Halsbury's Statutes 549.

Attention is called to a recent decision of the Court of Appeal that traffic studs are not part of the highway and that if the highway authority, to direct traffic, bring on to the road a thing which they do not take precautions to maintain in a safe condition, they are not protected by the plea of non-feasance and cannot take advantage of the doctrine applying to the maintenance of a highway (*b*). [676]

The regulation of traffic over pedestrian crossings is provided for, as regards London, by the London Traffic (Pedestrian Crossing Places) (No. 2) Provisional Regulations, 1934. Drivers of vehicles must approach a pedestrian crossing at such a speed as will enable them to stop before reaching the crossing. If the crossing is not controlled by light signals or police, every foot passenger is given precedence over all vehicular traffic at such crossings. If it is controlled, drivers must allow uninterrupted passage to pedestrians who have started to go over the crossing before the signal to proceed is given. Drivers must not stop upon a crossing, unless from causes beyond their control or to avoid an accident, and pedestrians must not remain longer upon a crossing than is reasonably necessary to cross from one side of the road to the other. Infringement of these regulations is made an offence punishable on summary conviction by a fine not exceeding forty shillings.

At the time of writing, the regulations relating to pedestrian crossings are still in the provisional stage, pending the making of substantive statutory rules and orders on the subject. The question of pedestrian crossings and their regulation was referred by the Minister to the Traffic Advisory Committee on p. 14 of whose Report for 1934-35 is the following recommendation :

"We gave consideration to the question of the method of marking pedestrian crossings and came to the conclusion that indications or signs on the footpath are necessary from the point of view both of pedestrians and of drivers of vehicles . . . and that from this point of view the beacons fixed on posts are of definite value both to pedestrians and to drivers."

Pedestrian crossings have now been provided in practically every part of the London Traffic Area.

But the unwillingness of the pedestrian to give up his ancient right of wandering across the road or street whenever and wherever he finds it convenient, caused the Minister seriously to consider the application to recalcitrant foot passengers of sect. 18 (8) of the Road Traffic Act, 1934 (*c*), by means of a regulation making it an offence to cross a street otherwise than at a crossing place. The question was submitted for consideration to the Traffic Advisory Committee who reported against the proposal as one of general application, whilst indicating that it might possibly become necessary to enforce it in certain streets, and who urged the further application of persuasive methods. [677]

Guard Rails to Footpaths.—The necessity of preventing pedestrians from wandering indiscriminately over the carriageway at the approaches to crossing places induced the Traffic Advisory Committee, in 1931, to recommend to the Minister that experiments should be made to ascertain the feasibility of erecting guard rails along the footpaths at such places. The power of erecting guard rails is an old one, given first to highway authorities in London by sect. 58 of the Metropolitan

(*b*) *Skilton v. Epsom and Ewell U.D.C.* (1936), 100 J. P. 281; [1936] 2 All E. R. 50.

(*c*) 27 Halsbury's Statutes 550.

Paving Act, 1817, in the case of "exposed or dangerous places" and then to the vestries and district boards by sect. 108 of the Metropolis Management Act, 1855 (*d*), "on the sides of any footway or carriage-way," and inherited by the borough councils. Guard posts were of common occurrence in connection with narrow footpaths at sharp corners, and ancient ones are still met with, particularly in the City and in the older parts of Westminster, but the power does not seem to have been much used except, perhaps, at one time, for controlling queues at certain busy tramway stopping places. The T. A. C. report (1934-35, p. 16) that, with the co-operation of the local authorities concerned, pedestrian guard rails to footpaths have been installed experimentally at five important road junctions in London and that the extension of these safeguards is now proceeding. [678]

Cyclists.—The Road Traffic Acts, 1930 and 1934, contain a number of provisions intended to make the riding of pedal cycles on the highways safer both for the cyclists themselves and for pedestrians and users of vehicles on the highways. The carriage on a bicycle of more than one person, viz. the person riding the bicycle, is prohibited by sect. 20 of the Act of 1934 (*e*), under a penalty of a fine not exceeding £5 for a first offence or £10 for a subsequent offence, unless the machine is specially constructed to carry more than one person. Sect. 19 of the Act of 1934 allowed the Minister to provide by regulations that the carriage of a red reflector at the rear should not exempt cyclists from the obligation of showing a red light at the rear unless the cycle also exhibited a white surface, and at the same time the section made the selling or offering for sale of inadequate reflectors an offence. The Pedal Cycles (White Surface) Provisional Regulations, 1934, prescribe the conditions in which the white surface and the red reflector are to be carried. Under sect. 59 (1) (b) of the Road Traffic Act, 1930 (*f*), the Minister may make regulations with regard to appliances to be fitted to bicycles for signalling their approach and (under sect. 21 of the Act of 1934 (*g*)), with regard to the number, nature and use of brakes on bicycles. [679]

The question of providing special tracks for cyclists, especially in that part of the London Traffic Area which lies outside the boundaries of the County of London, has led to much discussion, and the Road Fund Report for 1934-35 states that "it was felt desirable, in the interests of public safety, to co-operate with highway authorities in the provision of special tracks for pedal cyclists," experimental lengths having been laid in Middlesex and Bucks in order "to ascertain the extent to which these tracks are used by cyclists and the consequent effect on the traffic conditions of the main highway" (p. 11). Cyclist tracks in France, Belgium, Hamburg and Copenhagen, and other places in Europe have proved their usefulness.

The problem to be solved, especially within the London Traffic Area, however, differs from that with which the old French tracks had to cope, as this was largely one of dust and of avoiding long stretches of ancient stone paving. Nowadays the problem is one of danger, and accordingly the Middlesex tracks are to be "nine feet wide and constructed in reinforced concrete, the outer edge is 8 feet 6 inches from the carriageway, from which they are separated by a grass verge" (p. 11). [680]

(*d*) 11 Halsbury's Statutes 911.

(*f*) 23 Halsbury's Statutes 654.

(*e*) 27 Halsbury's Statutes 551.

(*g*) 27 Halsbury's Statutes 551.

III.—LONDON PASSENGER TRANSPORT

The London Passenger Transport Board.—The inadequacy of the London Traffic Act, 1924 (*h*), and of the various Road Traffic Acts to cope with the problems of London passenger traffic led Parliament to adopt the policy of centralising the ownership and working of the various undertakings engaged in passenger transport within the London area into the hands of a special public authority *ad hoc*.

This authority was established by the London Passenger Transport Act, 1933 (*i*), and was named the London Passenger Transport Board. Its duty is described in sect. 3 (1) of the Act as "to secure the provision of an adequate and properly co-ordinated system of passenger transport for the London Passenger Transport Area (as hereinafter in this Act defined) and for that purpose, while avoiding the provision of unnecessary and wasteful competitive services, to take from time to time such steps as they consider necessary for extending and improving the facilities for passenger transport in that area in such a manner as to provide most efficiently and conveniently for the needs thereof." [681]

The Board consists of a chairman and six other members each appointed for such term, being not less than three years and not more than seven, as shall be determined on appointment, and who are eligible for reappointment at the expiration of the term (sect. 1). The appointment of the Board is placed in the hands of a body called the "Appointing Trustees," consisting of the Chairman of the L.C.C.; a representative of the London and Home Counties Traffic Advisory Committee; the Chairman of the Committee of London Clearing Bankers; the President of the Law Society; the President of the Institute of Chartered Accountants; and in the case of appointments to fill vacancies after the first constitution of the Board the Chairman or some other member of the Board nominated for the purpose. The Minister of Transport does not seem to have a voice in appointments to the Board, except through the representative of the Advisory Committee, but resignations are to be addressed to him and he has the power to declare vacancies on disqualification (sect. 1 (4), (5)). He may also remove from office any member of the Board for inability or misbehaviour (sect. 1 (6)), and he determines the salaries and allowances payable to the members subject to consultation with the Appointing Trustees and the approval of the Treasury (sect. 4). [682]

The Board's Undertakings.—The undertakings taken over by the Board were:

(1) The Underground undertakings, including the Metropolitan District Railway, the whole system of "tube" railways, the London General and Associated Omnibus services, the Metropolitan Electric and the London United Tramways, the Green Linc and associated coaches;

(2) The Metropolitan Railway Company;

(3) The tramways, light railways and trolley vehicles of local authorities, viz. the L.C.C., the City of London, the Middlesex County Council, the Hertfordshire County Council, the Barking, Croydon, East Ham, Ilford, Leyton, Walthamstow and West Ham Corporations, and the Bexley, Dartford and Erith U.D.Cs.;

(4) The Tilling undertakings;

(h) 10 Halsbury's Statutes 172 *et seq.*

(i) 26 Halsbury's Statutes 744 *et seq.*

(5) Independent undertakings carrying on omnibus or motor coach services; and

(6) The Lewis undertakings.

The Board are authorised by sect. 15 to provide road services on any road within the London Passenger Transport Area (see *ante*, p. 284), on any road outside the said area specified in Parts II. and III. of Sched. VII. to the Act, and, under special working agreements, on any road outside the London Passenger Area within a radius of ten miles, or in the county of Kent five miles, from any point on the boundary of that area. [683]

The Special Area.—For the purposes of the Board's services, that part of the London Passenger Area which lies within the London Traffic Area, as defined by the Act of 1924, is called "the special area," see *ante*, p. 284. The provisions of the Road Traffic Act, 1930, as to road service licences do not apply to the Board's services which lie wholly within the special area, or, in the case of services lying partly within and partly without the special area, in so far as they lie within. But for services outside the special area, the Board have to obtain road service licences from the Commissioners under the Act of 1930 and to comply with the provisions, notably of sects. 72—76, of that Act (*j*). [684]

Licences in the Metropolitan Area.—With reference to the licensing of public service vehicles and their drivers and conductors, sect. 99 of the Road Traffic Act, 1930 (*k*), is replaced, as regards the metropolitan area, by sect. 51 of the London Passenger Transport Act, 1933 (*l*), whereby the Metropolitan Public Carriage Act, 1869 (*m*), sects. 8 and 14 of the Metropolitan Streets Act, 1867 (*n*), and the London Cab and Stage Carriage Act, 1907 (*o*), are excluded from application to public service vehicles or to their drivers or conductors, and the licensing of tramcars, light railway cars and trolley vehicles is transferred to the Minister of Transport, who is authorised to transfer the licensing of vehicles to the Traffic Commissioner and of drivers and conductors to the Commissioner of Police.

The Traffic Commissioner before granting a road service licence with respect to routes within the Metropolitan Police District or the City must, under sect. 51 (*g*), consult the Commissioner of the Metropolitan or of the City Police, as the case may be, who may appeal to the Minister. [685]

By the Metropolitan Traffic Area (Drivers' and Conductors' Licences) Order, 1934 (*p*), drivers and conductors residing in the Metropolitan Traffic Area must be licensed by the Commissioner of Metropolitan Police. [686]

Abolition of Powers of Public Authorities.—All powers of public authorities either by virtue of the Town Police Clauses Act, 1847 (*q*), or of any other Act with respect to public service vehicles, tramcars, light railway cars and trolley vehicles, or the licensing of such vehicles and their drivers or conductors, or the power to regulate such vehicles or the conduct of their drivers, conductors or passengers, cease to have effect within the metropolitan area (sect. 51 (*7*)). Similarly, the powers

(*j*) 23 Halsbury's Statutes 661—665.

(*l*) 26 Halsbury's Statutes 796.

(*n*) *Ibid.*, 156, 158.

(*p*) S.R. & O., 1934, No. 1400.

(*k*) *Ibid.*, 675.

(*m*) 19 Halsbury's Statutes 163.

(*o*) *Ibid.*, 170.

(*q*) 18 Halsbury's Statutes 601 *et seq.*

of local authorities under sect. 90 of the Road Traffic Act, 1930 (*r*), to make orders determining the highways which may or may not be used by public service vehicles and to prescribe stands and parking places cannot be exercised within the limits of the London Traffic Area (sect. 52). The resulting distinction between the position of local authorities in the Metropolitan Area and the London Traffic Area should be noticed.

The London Passenger Transport Act, 1933, establishes in the Board a monopoly of passenger transport by stage or express carriage within the "special area." By sect. 16 (1), "no person other than the Board shall, except with the written consent of the Board, carry within the special area any passengers on any vehicle while that vehicle is being used as a stage carriage or an express carriage," other than passengers entering within the area for setting down outside, or passengers entering outside for setting down within, or entering outside for setting down outside. [687]

Thames Steam Service.—The powers of the L.C.C. to establish a service of passenger vessels on the Thames under the Thames River Steamboat Service Acts, 1904 and 1908 (*s*), have also been transferred to the Board, who may exercise the powers themselves or transfer them to persons willing to provide the service (sect. 19). [688]

Abandonment of Tramways.—As regards the tramway services, the Board are given power to "abandon in whole or in part any tramway forming part of their undertaking . . ." under the conditions laid down in sect. 23 of the Act. The policy of gradually substituting trolley vehicles for tramways was given effect to at once and the London Passenger Transport Acts, 1934 to 1936, provide for effecting the substitution over the routes to which the Acts apply. [689]

Fixing of Fares.—Under sect. 26 (2), the Board are the authority for fixing fares on road services provided by them and in the case of railway services application may be made to the Railway Rates Tribunal by local authorities or by the Board themselves for reductions or increases (sect. 29 (1)). Local authorities can also apply under sect. 30 to the Railway Rates Tribunal with respect to the withdrawal or reduction of services or facilities provided by the Board or with respect to the need of new or improved services or facilities for the area of the authority.

The Railway Rates (Additional Rules) Order, 1934 (*t*), was issued for dealing specially with the situation created by the London Passenger Transport Act.

As regards trolley vehicles, the fares are regulated by Part VII. of the London Passenger Transport Act, 1934, and Part VI. of the London Passenger Transport Act, 1935. [690]

Co-operation with Railways.—The necessity of co-ordination between the Board's services and the suburban passenger services of the railway companies was provided for by the formation under sect. 31 of a standing joint committee of the railway companies and of the Board, who were especially entrusted with the consideration of proposals for through bookings, leasing or working of lines, running powers, working of services, interavailability of tickets, etc., and for the planning and carrying out of developments and improvements. An

(*r*) 23 Halsbury's Statutes 670.

(*s*) 4 Edw. 7, c. cccii.; 8 Edw. 7, c. xcviii.

(*t*) S.R. & O., 1934, No. 374.

early result of the Committee's work was embodied in the London Passenger Transport (Agreement) Act, 1935 (*u*), authorising the Treasury to guarantee up to £40,000,000 for works of improvement and extension in certain railway systems serving the London Passenger Transport Area, the work to be completed within five years from September 30, 1935. Of this sum, 70 per cent. is to be allotted to the London Passenger Transport Board, 25 per cent. to the London & North Eastern Rail. Co., and 5 per cent. to the Great Western Rail. Co. The execution of this work will entail the disappearance of many level crossings which now interfere with road traffic in the suburban area served by the London & North Eastern Railway mainly in Essex, and by the Great Western Railway in Middlesex.

The possibility of effective co-operation at the present day between the railway companies and the Board's system of electric railways was ensured first by the pooling arrangements of the underground group and the co-ordination of electric railways and tubes, and then by the Railways Act, 1921 (*a*), which provided for the amalgamation and grouping of the various railway companies, so as to leave only four separate groups, the Southern, the Western, the North-Eastern and the London Midland and Scottish. But for the Act of 1921, the standing joint committee would have had a much more difficult task before them. [691]

IV.—TAXI-CABS

The hackney-carriage and taxi-cab service has not been taken over by the London Passenger Transport Board and remains substantially as it was before the constitution of the Board. It is still governed by the unrepealed portions of the London Hackney Carriage Acts, 1831, 1848 and 1853 (*b*), the Metropolitan Public Carriage Act, 1869 (*c*), and the London Cab and Stage Carriage Act, 1907 (*d*).

The police license vehicles and drivers, while fares are fixed by the London Cab Order, 1934 (*e*), of the Home Secretary.

The appointment and regulation of cab standings are dealt with by the Commissioner of Police of the Metropolis under the London Hackney Carriages Act, 1850. In certain scheduled streets cabs are not permitted to "loiter," *i.e.* proceed at a speed lower than the ordinary speed of the traffic in those streets, see the London Traffic (Miscellaneous Provisions) Consolidated Provisional Regulations, 1934.

It may be advisable to point out that a hackney carriage or taxi-cab does not normally come within the definition of a "public service carriage" and that therefore the regulations applicable to the latter are not applicable to the former except when the former ceases to fulfil its normal function of a "contract carriage." But a Divisional Court, on appeal from a County Court, have held that the old and popular practice of "sharing a taxi" would, under the Road Traffic Act, 1930, create an offence, as the taxi would thereby cease to be a "contract carriage" within the meaning of the Act, and would be used as an express carriage without a road service licence under sect. 72 (10) of the Act (*f*). [692]

(u) 28 Halsbury's Statutes 354.

(b) 19 Halsbury's Statutes 106, 125, 144.

(c) *Ibid.*, 170.

(f) *Newell v. Cross*, [1936] 2 All E. R. 203; Times, May 13, 1936.

(a) 14 Halsbury's Statutes 316.

(c) *Ibid.*, 163.

(e) S.R. & O., 1934, No. 1346.

LONDON SQUARES

*See also titles : GARDENS AND SQUARES ;
TOWN AND COUNTRY PLANNING.*

The formation of numerous squares in London was a distinctive feature of the development of certain areas in which large houses were erected, particularly to the north of the Thames. A number of these squares are regulated by special Acts passed a century or more ago for their individual preservation, a list of which is given in Appendix IV. of the Report of the Royal Commission on London Squares (a). The report points out (p. 18) that though the Acts vary considerably, their general import, so far as the enclosures are concerned, appears to be the same. Provision is made in them all for the appointment of trustees or commissioners with power to form an enclosure and maintain it, or, in comparatively rare cases, this power is reserved to the freeholder, the trustees being required to reimburse him the reasonable expenses of so doing. The property in the rails, fences, trees, etc., is vested in the trustees, who may meet expenses by levying a rate, in some cases limited in amount, on the occupiers of the houses in the square. Most of the Acts reserve the exclusive use of the enclosure to inhabitants rated and save the rights of inheritance of the enclosure. The report points out that in view of the Edwardes Square judgment (mentioned later) there appears to be nothing in any of the Acts limiting their operation in point of time. [693]

By sect. 90 of the Metropolis Management Act, 1855 (b), the trustees, commissioners and other bodies having powers of paving, etc., under local Acts were abolished, and their powers, property, etc., were transferred to the vestries and district boards, subject to the special provision as to squares, etc., in sect. 239 of the Act (c); see p. 14 of the report. The effect of sect. 239 is that trustees or commissioners who, under a local Act, had powers of management of an enclosure, such powers not extending beyond the enclosure and the streets surrounding it, were not divested of any property in the enclosure nor of any powers of managing it, or of levying rates. Trustees or commissioners whose powers did extend beyond such limits ceased to function, and the management of the enclosure was vested in a committee of inhabitants whose expenses were met by a rate levied by the vestry or district board on the occupiers of houses previously assessed, subject to any limit previously imposed. [694]

The London Government Act, 1899 (d), set up metropolitan borough councils in place of the vestries and district boards, and sect. 16 (1) (g) enabled schemes to be made *inter alia* for repealing or modifying any

(a) Cmd. 3196, published in 1928.
(c) *Ibid.*, 943.

(b) 11 Halsbury's Statutes 904.
(d) *Ibid.*, 1225-1243.

local Act other than the London Building Act. By schemes confirmed by Orders in Council under the Act, a special Act was, in one case, repealed with the exception of sections relating to management; in the other cases the Acts were wholly repealed subject to a saving for things done under the repealed Acts. See p. 16 of the report. [695]

The Town Gardens Protection Act, 1863 (e), is in London administered by the L.C.C., except in the City, where it is administered by the City Corporation. See sect. 1 of the Act and pp. 16, 17 of the report. [696]

The London Squares and Enclosures (Preservation) Act, 1906 (f), was promoted by the L.C.C. as a result of the public interest evinced in connection with the sale of Edwardes Square, Kensington. The Act is limited to 64 squares included in the Act by agreement, 16 of which belonged to private owners, 3 to the Crown, 4 to the Ecclesiastical Commissioners, and the remainder to local authorities, garden committees, or trusts. The Act prohibits the erection of buildings on these enclosures, other than buildings required for their use as gardens or recreation grounds, etc. It preserves the inheritance of the lands and provides that, in the event of a compulsory acquisition, the compensation should be determined as if the Act had not been passed. Provision is also included to enable an alternative open space to be substituted in the event of redevelopment. [697]

The sale of Edwardes Square took place in 1904; and in 1910, when the lease expired, the question of its future was the subject of a lawsuit in which the House of Lords held (g) that the powers of management were perpetual, as were the rights of the residents to the enjoyment of the enclosure. Subsequently the sale and development of the enclosures in Endsleigh Gardens and Mornington Crescent caused public concern, and this led the L.C.C. to ask the Government to institute an inquiry. The Royal Commission on London Squares was appointed on August 5, 1927, to inquire and report on the squares and enclosures in London and the desirability of their preservation as open spaces.

The Royal Commission limited their inquiry to enclosures which formed a definite part of a plan of building development and which were surrounded by roads or were allocated to the common use of the inhabitants of the adjoining houses. The Commission accordingly did not concern itself with private grounds attached to single dwelling-houses or to institutions. Their report covered 461 enclosures with a total area of about 400 acres, of which rather more than one-half were by statute or otherwise protected. The remaining 228 were subject only to such leases of the enclosures as might have been granted, or to such rights of user, etc., as might have been included, in leases of adjoining houses. In 1930 the Government suggested that the legislation recommended by the Commission should be promoted by the L.C.C. The council accordingly promoted the London Squares Preservation Act, 1931 (h), based on the main recommendations contained in the report of the Royal Commission. [698]

(e) 12 Halsbury's Statutes 372-375. See title GARDENS AND SQUARES.

(f) 6 Edw. 7, c. clxxxvii.

(g) *Allen v. Bird*; the case is not reported in the Law Reports, but the judgments are given in full in the Report of the Royal Commission on London Squares (1928, Cmd. 3196).

(h) 21 & 22 Geo. 5, c. xciii.

The main object of the Act of 1981 is the restriction of the use of the scheduled enclosures (referred to as "protected squares") to the "authorised purposes," viz. as ornamental gardens, pleasure grounds, etc., and the prohibition of the erection or placing thereon of any buildings, etc., other than those necessary in connection with the authorised purposes (sect. 3 (1)). The county council are to enforce sect. 3 and any conditions imposed thereunder, and may take civil proceedings in respect of breaches. Penalties are also imposed (sect. 3 (9)–(11)).

Sect. 23 saves existing rights of inheritance, property, maintenance, user and control, etc., except as expressly provided in the Act.

The provisions of sect. 3 are subject to the right of owners or lessees to use or permit the use of the subsoil for underground works and buildings in a manner which will not interfere with the use of the square for authorised purposes, or (with the council's consent and subject to conditions imposed by them) to use so much of the surface as may be reasonable for the construction and maintenance of such works, etc. (sect. 3 (2)). Provision is made for an appeal to an arbitrator against any refusal of consent or against any condition. The section contains a saving for the use of the square in certain circumstances as an allotment garden, or for street widening or construction.

Provision is made by sect. 4 enabling an owner to redevelop his estate, including a protected square, so long as an alternative open space, which, in the opinion of the county council, or, on appeal, of the M. of H., is equally advantageous, is reserved with the same restrictions.

Sect. 5 provides for compensation in respect only of the protected squares entered in Parts II. and III. of the schedule. The L.C.C. are responsible for meeting such claims. Notice of intention to claim had to be given in writing to the council not later than twelve months after July 31, 1981, by any person who deemed that his interest in any protected square was injuriously affected by the restrictions imposed. The various machinery provisions in this section include power for the council within six months from the final determination of the amount of compensation either to pay compensation or to give notice (1) that they decline to pay compensation but propose to make an order applying the Act to only part of the square, or (2) that they decline to pay compensation and do not propose to make an order. Thereupon the Act ceases to apply, in case (1) to the part of the square not defined by the order; or in case (2) to the whole of the square. The county council are liable to pay the costs of the claimant; and in case (1) a further right of claim arises in respect of the part remaining protected. [899]

The City Corporation and any metropolitan borough council are empowered by sect. 8 to contribute to expenditure incurred by the county council under the Act in respect of any protected square within the area of the contributing authority.

Special provisions as to payment of compensation to trustees and mortgagees, and as to charity lands and lands held by trustees, are contained in sects. 6 and 7. Provisions are also included in sect. 24 to deal with future compulsory acquisition.

Several sections of the Act also safeguard or modify provisions in respect of the squares to which they refer.

The provisions of the Act are in addition to and not in derogation of any other enactment prohibiting the erection of buildings on, or restricting the user of, any protected square (sect. 32). [700]

LONDON TRAFFIC

See LONDON ROADS AND TRAFFIC.

LORD LIEUTENANT

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See also title: CUSTOS ROTULORUM.

Introductory.—The lord lieutenant or H.M. lieutenant (*a*) of a county is an officer appointed by the Crown by letters patent under the Great Seal, on the recommendation of the Prime Minister, and is the permanent representative of the Crown in the county for which he is appointed. He holds office during the pleasure of the Crown, unlike the sheriff who is appointed annually. The functions of the lord lieutenant are now almost entirely of a ceremonial nature, but he still retains the customary right of making recommendations for appointment to the commission of the peace for the county; in this function he is assisted by an advisory committee (*b*), but he is not precluded from making recommendations on his own initiative. [701]

The appointment of lords lieutenant can be traced back to the reign of Henry VIII., and, in its origin, the office was one of great responsibility, inasmuch as its holder was responsible for the maintenance of order in his county, and for all military measures necessary for its defence. The lord lieutenant therefore became the head of the county militia, and various Militia Acts (now repealed), and notably the Militia Act, 1802, set up a definite military organisation under the control of the lieutenants and deputy lieutenants (*c*). The Militia

(a) The alternative title of H.M. lieutenant is sometimes used when the holder of the office is not a peer; the statutory title, used in the Militia Act, 1882 (*infra*), is simply "lieutenant."

(b) As to advisory committees, see title ADVISORY COMMITTEE at p. 147 of Vol. I. These committees were set up in 1910, following the Report of the Royal Commission on the Selection of Justices of the Peace, and neither the power of recommendation of the lord lieutenant, nor the functions of the committee have any statutory basis.

(c) By the Militia Act, 1802, s. 5, the lieutenant was expressed to be in chief command of the militia within the county.

Acts were consolidated by the Militia Act, 1882 (*d*), and the statutory provisions now remaining as to the lord lieutenant are principally contained in that Act, but his duties under the Militia Acts disappeared when, by the Territorial Army and Militia Act, 1921 (*e*), that part of the army reserve formerly known as the "special reserve" was renamed "the militia" (but without altering its constitution or the basis of enlistment and service) and the militia (*f*), raised under the Militia Acts, was abolished. The repeals effected by the Statute of 1921 included the right of the lord lieutenant to nominate officers to first commissions in the militia under sect. 6 of the Militia Act, 1882. The lord lieutenant is ordinarily president of the territorial force association for the county constituted under the Territorial and Reserve Forces Act, 1907. See sect. 1 (3) (*c*) of that Act (*g*).

The duties of the lord lieutenant in connection with the preservation of order in his county are now obsolete, but prior to the development of the present systems of local government and regular police, the lord lieutenant, who very frequently was also *custos rotulorum* (see title *CUSTOS ROTULORUM* at p. 276 of Vol. IV.), was in effect the head of the county magistracy, and the channel of communication between the government of the county and the Crown and departments of state. [702]

Appointment.—There is no statutory qualification for the office of lord lieutenant and no restriction as to residence, but normally the appointment is conferred on a peer, an heir-apparent to a peerage, or a prominent land-owner residing in the county.

Pursuant to sect. 29 of the Militia Act, 1882 (*h*), the Crown appoints from time to time lieutenants for the several counties in the United Kingdom, and by sect. 48, the term "county" is defined as meaning a county at large, except that each riding of the county of York is a separate county (*i*). The counties of cities, counties of towns, and small special areas enumerated in Sched. I. to the Act of 1882 are by sect. 48 each deemed to form part of the county indicated in the schedule, and all other places locally situated in a county are deemed to form part of that county. Every place declared by sect. 48 to form part of a county is to be subject to the jurisdiction and authority of the lieutenant and deputy lieutenants of the county. Sect. 49 (1) to (4) of the Act of 1882 made special provision for the Isle of Wight, liberty of the Tower Hamlets, the Cinque Ports and the county of the town of Haverfordwest, but these sub-sections were repealed by the Territorial Army and Militia Act, 1921. Sub-sect. (5), however, relating to the stannaries was repealed only so far as it relates to the raising of a corps of miners. One lieutenant only is appointed for the county of Southampton, including the Isle of Wight (*k*), but a lieutenant is still appointed

(*d*) 17 Halsbury's Statutes 261—265.

(*e*) *Ibid.*, 418—422.

(*f*) The militia was really the original and constitutional armed force of the country, and was regulated by permanent statutes, whereas the regular standing army depended for its existence on annual legislation; in effect, militia service was compulsory so long as the system of county quotas existed.

(*g*) 17 Halsbury's Statutes 277.

(*h*) *Ibid.*, 261.

(*i*) A list of the lords lieutenant will be found in the Law List.

(*k*) See s. 6 of the Isle of Wight (County) Order, 1889, scheduled to 52 & 53 Vict. c. clxxvii.

for the county of the town of Haverfordwest, in addition to the lieutenant for the county of Pembroke (*l*). [703]

Deputy Lieutenants.—By sect. 30 of the Militia Act, 1882 (*m*), the lieutenant is required to appoint as his deputy lieutenants such persons as he thinks fit, to a number not less than twenty, provided so many suitably qualified persons can be found. The names of persons proposed for appointment must be submitted to the Crown (through the Secretary of State for War), and no appointment may be made until the lord lieutenant is informed that the Crown does not disapprove (sect. 48 (3)). The qualifications of a deputy lieutenant are now contained in the Deputy Lieutenants Act, 1918 (*n*), and he must have a place of residence in the county or within seven miles of it, and must be shown to the satisfaction of a Secretary of State to have rendered worthy service as a member of, or in a civil capacity in connection with, H.M. naval, military or air forces.

The clerk of general meetings of lieutenancy is required by sect. 34 of the Act of 1882 (*o*) to publish in the *London Gazette* the names of persons appointed as deputy lieutenants, with the dates of their commissions, in the same manner as the commissions of officers of H.M. land forces are published. The cost of publication falls on the county rate. [704]

Sect. 80 (4) of the Act of 1882 provides that on the signification of the pleasure of the Crown that all or any of the deputy lieutenants should be displaced, the lieutenant shall forthwith displace them and appoint others in their stead, and a return of appointments and displacements, made up to December 31, is required to be laid before Parliament annually. The commission of a deputy lieutenant is not vacated by the lieutenant ceasing to hold office (sect. 30 (5)).

Sects. 31, 32 provide for the absence or disability of the lieutenant. If he is absent from the United Kingdom or is unable to act by reason of sickness or otherwise, or when the office of lieutenant is vacant, the Crown may authorise any three deputy lieutenants to act as lieutenant, with all the powers of the office. The lieutenant may himself, with the approval of the Crown, appoint a deputy lieutenant to act as vice-lieutenant, during his absence from the county, sickness or other inability to act. Until the vice-lieutenant's appointment is revoked, or he is removed by the Crown, the vice-lieutenant may under sect. 32 act as lieutenant whenever absence, sickness or inability of the lieutenant occurs, but the enactment allows the Crown to override the appointment of the vice-lieutenant by an authorisation under sect. 31 (*supra*). [705]

Powers and Duties.—Subject to the provisions of the Act of 1882, or of any other statute, the lieutenant and deputy lieutenants appointed under the Act of 1882 have, by sect. 86 of that Act, such jurisdiction, duties, powers and privileges, within their counties, as are vested in them by any statute for the time being in force (*p*).

(*l*) See also Vol. IV., pp. 195, 196.

(*m*) 17 Halsbury's Statutes 261.

(*n*) *Ibid.*, 417.

(*o*) *Ibid.*, 202. The requirements of s. 34 as to delivery to the clerk of lieutenancy of a statement of qualification of a proposed deputy lieutenant (other than a peer), the lodging of a copy with the lord lieutenant, and the periodical returns as to qualifications to be laid before Parliament, were all repealed by the Act of 1918. S. 35 of the Act of 1882 (penalty for acting as deputy lieutenant without being qualified) was also repealed.

(*p*) This appears to be an enabling provision, and, *semble*, does not remove or diminish any common law or customary jurisdiction, duties, powers and privileges.

The Militia Act, 1802, is wholly repealed by the Territorial Army and Militia Act, 1921, but the second schedule to that Act (*g*) preserves so much of sect. 18 of the Act of 1802 as prescribes the appointment of clerks to general meetings of lieutenantancy (*r*).

The jurisdiction of the lord lieutenant was not affected by the creation of county boroughs under the L.G.A., 1888, for by sect. 59 (2) of that Act (*s*), if a county borough was part of any county for the purposes of the lieutenant, nothing in the Act was to prevent its continuance as part of the county for that purpose. A scheme or order under Part VI. (Alteration of Areas) of the L.G.A., 1933, may, under sect. 148 (1) (*d*) of the Act (*t*), contain incidental, consequential or supplemental provisions as to the functions or area of jurisdiction of any lieutenant, and as to the costs and expenses of that officer. [706]

The lord lieutenant takes precedence in his county over the sheriff of the county, the chairman of the county council, and all other office-holders. The better opinion seems to be that in a county borough or borough within his county he takes precedence over the lord mayor or mayor, the sheriff of a county of a city or town, and all other office-holders (*u*). Sect. 18 (5) of L.G.A., 1933 (*a*), giving the mayor precedence in all places in the borough is subject to the qualification that His Majesty's royal prerogative shall not be prejudiced, and it seems clear that the position of the lord lieutenant in relation to boroughs in his county is not altered by that enactment. But it is suggested, however, that precedence should be claimed for the lord lieutenant only when he is present in the exercise of his office as the representative of the Crown or has been invited to attend as lord lieutenant.

An important (but non-statutory) function of the lord lieutenant is the convening of conferences and meetings to deal with matters of wide public interest or of national importance, particularly in times of emergency. As the representative of the Crown, the lord lieutenant can deal with such questions without political bias and on a non-party basis, and is therefore peculiarly fitted for the task of inviting parties of different views to confer on some object of public or national importance. His position enables him also to promote local effort on behalf of national relief and charitable funds, and in particular such funds as are sponsored or inaugurated by a member of the Royal Family. In such cases, however, it is customary not to insist on any right of precedence of the lord lieutenant in a city or borough, as there the lord mayor or mayor can frequently give more effective stimulus and direction to local efforts. [707]

London.—Sect. 91 of L.G.A., 1888 (*b*), provides that the Acts relating to the general and local militia shall apply to the whole of the County of London (*c*) and that a lieutenant of the County of London

(*g*) 17 Halsbury's Statutes 419.

(*r*) For the part of s. 18 still in force, see 17 Halsbury's Statutes 105. The clerk of lieutenantancy in the Stannaries of Cornwall and Devon is the clerk appointed by the Warden of the Stannaries (Militia Act, 1832, s. 49 (5)).

(*s*) 10 Halsbury's Statutes 734.

(*t*) 26 Halsbury's Statutes 386.

(*u*) This view appears to coincide with a ruling given by the Lord Chamberlain's Department on April 5, 1935, following earlier rulings on the same point. There is, however, authority for the view that the mayor takes precedence, unless the lord lieutenant is deputed to represent the King.

(*a*) 26 Halsbury's Statutes 314.

(*b*) 10 Halsbury's Statutes 758.

(*c*) Meaning the county exclusive of the City of London. See s. 40 (2) of the Act; 10 Halsbury's Statutes 718.

shall be appointed, but nothing in the section is to affect sect. 50 of the Militia Act, 1882 (d). That section provides that the City of London shall be a separate county for the purposes of the militia, and that the Act is to apply so far as consistent with the special enactments relating to the city. The commissioners of lieutenancy of the city are, for the purposes of the Act and those enactments, to be the lieutenant of the county, and the provisions of the Act as to deputy lieutenants are not to apply to the city. See also p. 193 of Vol. III. By sect. 49 (2), the Act of 1882 applied to the Tower Hamlets as if it were a separate county, but by sect. 48 (1) of the Act of 1888 (e) and an Order in Council dated April 30, 1894, the Tower Hamlets now forms part of the County of London. [708]

(d) 17 Halsbury's Statutes 263.

(e) 10 Halsbury's Statutes 726.

LORD MAYOR

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See also title : MAYOR.

The lord mayor, in relation to his city, holds the same position, and has the same rights and privileges and is subject to the same duties and obligations as a mayor.

The title of "Lord Mayor" is enjoyed in the City of London and the City of York by prescription. In other cities it has been granted, in more modern times, by letters patent of the Sovereign. The instrument granting the right provides that the chief magistrate shall be called and named by the style, title and appellation of "Lord Mayor," and shall enjoy and use all and singular the rights, privileges, pre-eminences and advantages to the degree of a lord mayor, in all things duly and of right belonging.

By custom the Lord Mayor of London, followed by the Lord Mayor of York, takes precedence over other lord mayors, who, in turn, take precedence over mayors.

The Lord Mayors of London and York are entitled to be styled "Right Honourable," having enjoyed that privilege from time immemorial. For many years it was the practice for other lord mayors to be styled "Right Honourable," but, on July 25, 1927, the Home Secretary, in answer to a question in the House of Commons, ruled that the style "Right Honourable" can only be conferred by a grant from the Sovereign as the Fountain of Honour.

If the chief magistrate is a lady, she is still styled the Lord Mayor.

[709]

Deputy.—Sect. 20 (1) of L.G.A., 1933 (a), authorises the mayor to appoint an alderman or councillor of the borough to be deputy-mayor.

(a) 26 Halsbury's Statutes 315.

The lord mayor when he appoints a deputy does so in pursuance of this authority, and the title of his deputy is, it is submitted, "Deputy-Mayor." [710]

London.—For the Lord Mayor of the City of London, see title CITY OF LONDON.

"LOSSES ON ACCOUNT OF GRANTS"

See GENERAL EXCHEQUER GRANTS.

"LOSSES ON ACCOUNT OF RATES"

See GENERAL EXCHEQUER GRANTS.

LOUD SPEAKERS

See WIRELESS.

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See MENTAL DISORDER AND MENTAL DEFICIENCY.

LUNACY COMMISSIONERS

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MACHINERY, RATING OF

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See also titles : ASSESSMENT FOR RATES ;
DERATING ;
LONDON, RATING IN.

INTRODUCTORY

The rating of machinery is for the first time dealt with by statute in the R. & V.A., 1925 (a), an Act to amend the law with respect to the valuation of machinery among other purposes stated in its long title. Until the Act operated, all machinery on premises used for the business of the occupiers, whether affixed to the freehold or not, and whether provided by the owner or the occupier, was rateable (b), but by sect. 24 of the Act (c) certain machinery and plant is no longer rateable. Broadly stated, the machinery and plant derated is that usually described as the tenant's, or as the process machinery and plant. The Act does not specify the plant and machinery that is exempted, but a detailed statement is given of that which is to be rated, and no other plant or machinery is to be taken into account in the valuation of any hereditament.

(a) 14 Halsbury's Statutes 617—708.

(b) *Kirby v. Mansel U.A.C.*, [1906] A. C. 43 ; 38 Digest 533, 785 ; *Smith & Sons, Ltd. v. Willemsen U.A.C.* (1916), 89 L. J. (K. B.) 137 ; 38 Digest 531, 792.

(c) 14 Halsbury's Statutes 650.

The plant and machinery rateable is the machinery and plant used or intended to be used mainly or exclusively in connection with the generation, storage, primary transformation or main transmission of power, or for the heating, cooling, ventilating, lighting, draining or supplying of water to the hereditament or to protect it from fire; passenger lifts and elevators, railway and tramway lines and tracks, and such plant and machinery as is of the nature of a building or structure (*d*).

Any shafting, pipes, cables, wires and other appliances and structures accessory to such machinery and plant are to be included (*e*).

All such plant or machinery and the accessories in or on the hereditament are to be deemed to be part of the hereditament, and no account is to be taken of the value of any plant or machinery other than that specified (*f*).

On the basis of the summary in the Third Schedule, a detailed statement in accordance with sect. 24 (5) of the Act has been confirmed by the M. of H., of all the machinery and plant which is now rateable, and this detailed statement is for all purposes to have effect as if it were substituted for the Third Schedule. [711]

MACHINERY AND PLANT RATEABLE

The classes of machinery and plant which, in the words of the Act, are deemed to be part of the hereditament are set out in the Schedule to the Plant and Machinery (Valuation for Rating) Order, 1927 (*g*). They are grouped in five classes, viz. 1a, 1b, 2, 3 and 4, but the machinery and plant in Class 4 are to be deemed to be part of the hereditament whenever and only to such extent as any such part is, or is in the nature of, a building or structure. [712]

Class 1a.—This comprises the machinery and plant specified under heads (1) to (12) of the Schedule to this Class (together with appliances and structures accessory thereto specified in paragraphs (1) and (2) of the Schedule of Accessories) which is used or intended to be used mainly or exclusively in connection with the generation, storage, primary transformation (as defined in the Schedule to the order) or main transmission (as similarly defined) of power in or on the hereditament.

“Primary transformation of power” and “main transmission of power” are defined in the second and third paragraphs of the Schedule to the order, but the definitions are too lengthy for inclusion here. The latter definition is referred to *post*, p. 318.

The Schedule to Class 1a covers the following machinery and plant:

(1) Steam boilers, including their settings, chimneys, flues and dust or grit catchers used in connection therewith; furnaces; mechanical stokers; injectors, jets, burners and nozzles; superheaters; feed-water pumps and heaters; economisers; accumulators; deaerators; blow-off tanks; gas retorts and charging apparatus, producers and generators; (2) steam engines; steam turbines; internal combustion engines; hot-air engines; barring engines; (3) continuous

(*d*) See Third Schedule; 14 Halsbury's Statutes 605.

(*e*) *Ibid.*, para. 1.

(*f*) S. 24 (1); 14 Halsbury's Statutes 650.

(*g*) S.R. & O., 1927, No. 480, printed at 14 Halsbury's Statutes 703—708.

and alternating current dynamos; couplings to engines and turbines; field exciter gear; three-wire or phase balancers; (4) storage batteries, with stands and insulators, regulating switches, boosters and connections forming part thereof; (5) static transformers; auto transformers; motor generators; motor converters; rotary converters; transverters; rectifiers; phase converters; frequency changers; (6) cables and conductors; switchboards, distribution boards, control panels and all switchgear and other apparatus thereon; (7) water wheels; water turbines; rams; governor engines; penstocks; spillways; surge tanks; conduits; flumes; sluice gates; (8) pumping engines for hydraulic power; hydraulic engines; hydraulic intensifiers; hydraulic accumulators; (9) air compressors; compressed-air engines; (10) windmills; (11) shafting, couplings, clutches, worm-gear, pulleys and wheels; and (12) steam or other motors which are used or intended to be used mainly or exclusively for driving any of the machinery and plant falling within this class. [713]

Class 1b.—This includes the machinery and plant specified in paragraphs (a) to (h) of the Schedule to this Class (together with the appliances and structures accessory thereto specified in para. (2) of the Schedule of Accessories (*post*)) which is used or intended to be used mainly or exclusively in connection with the heating, cooling, ventilating, lighting, draining or supply of water to the land or buildings of which the hereditament consists, or the protecting of the hereditament from fire. But if the machinery or plant is in or on the hereditament for the purpose of manufacturing operations or trade processes, the fact that it is used in connection with those operations or processes for the purpose of heating, cooling, ventilating, lighting, supplying water or protecting from fire must not cause it to be treated as falling within the classes of machinery and plant specified in the Schedule to Class 1b. [714]

The following machinery and plant are mentioned in the Schedule to Class 1b:

(a) *General*.—Any of the machinery and plant specified in the schedule to Class 1a and any steam or other motors which are used or intended to be used mainly or exclusively for driving any of the machinery and plant falling within paras. (b) to (h) of this schedule.

(b) *Heating*.—(i.) Water heaters; (ii.) headers and manifolds; steam pressure reducing valves; calorifiers; radiators; heating panels; hot-air furnaces with distributing ducts and gratings; (iii.) gas pressure regulators; gas burners; gas heaters and radiators and the flues and chimneys used in connection therewith; and (iv.) plug-sockets and other outlets; electric heaters.

(c) *Cooling*.—(i.) Refrigerating machines; (ii.) water screens; water jets; and (iii.) fans and blowers.

(d) *Ventilating*.—Air intakes, channels, ducts, gratings, louvres and outlets; plant for filtering, washing, drying, warming, cooling, humidifying, deodorising and perfuming, and for the chemical and bacteriological treatment of air; fans; blowers; gas burners, electric heaters, and pipes and coils when used for causing or assisting air movement.

(e) *Lighting*.—(i.) Gas pressure regulators; gas burners; and (ii.) plug-sockets and other outlets; electric lamps.

(f) *Draining*.—Pumps and other lifting apparatus; tanks; screens; and sewage treatment machinery and plant.

(g) *Supplying Water*.—Pumps and other water-lifting apparatus ; sluice gates ; tanks, filters and other machinery and plant for the storage and treatment of water.

(h) *Protection from Fire*.—Tanks ; pumps ; hydrants ; sprinkler systems ; fire alarm systems ; lightning conductors. [715]

Schedule of Accessories.—This covers : (1) In addition to the machinery and plant specified in paras. (1) to (12) of the Schedule to Class 1a, any of the following machinery and plant which is used or intended to be used mainly or exclusively in connection with the handling, preparing or storing of fuel required for the generation or storage of power in or on the hereditament : viz. cranes with their grabs or buckets ; truck or waggon tippers ; elevating and conveying systems, including power winches, drags, elevators, hoists, conveyors, transporters, travellers, cranes, buckets forming a connected part of any such system, and any weighing machines used in connection therewith ; magnetic separators ; driers ; breakers ; pulverisers ; bunkers ; gasholders ; tanks.

(2) Any of the following machinery and plant which is used or intended to be used mainly or exclusively as part of or in connection with or as an accessory to any of the machinery and plant falling within Class 1a or Class 1b, viz. : (i.) Foundations, settings, gantries, supports, platforms and stagings for machinery and plant ; (ii.) steam-condensing plant, compressors, exhausters, storage cylinders and vessels, fans, pumps and ejectors ; ash-handling apparatus ; (iii.) travellers and cranes ; (iv.) oiling systems ; earthing systems ; cooling systems ; (v.) pipes, ducts, valves, traps, separators, filters, coolers, screens, purifying and other treatment apparatus, evaporators, tanks, exhaust boxes and silencers, washers, scrubbers, condensers, air heaters, and air saturators ; (vi.) shafting supports, belts, ropes and chains ; (vii.) cables, conductors, wires, pipes, tubes, conduits, casings, poles, supports, insulators, joint boxes and end boxes ; (viii.) instruments and apparatus attached to the machinery and plant, including meters, gauges, measuring and recording instruments, automatic controls, temperature indicators and alarms and relays. [716]

Class 2.—Lifts and elevators mainly or usually used for passengers. [717]

Class 3.—Railway and tramway lines and tracks. [718]

Class 4.—The following parts of a plant or a combination of plant and machinery whenever and only to such extent as any such part is, or is in the nature of, a building or structure : acid concentrators ; bins and hoppers ; blast furnaces ; bunkers ; burners, forges, furnaces, kilns, ovens and stoves ; chambers for absorption of gases or fumes, aerographing and spraying, bleaching, chemical reaction, conditioning or treatment, cooling, drying, dust or fume collecting, fibre separation (wool carbonising), fuming, impregnating, refrigerating, regenerating, sandblasting, sterilising and sulphuric acid ; also

Chimneys ; coking ovens.

Condensers and scrubbers : acid, alkali, gas, oil and tar.

Conveyor gantries ; cooling ponds ; crane gantries ; cupolas ; economisers ; elevators and hoists ; evaporators ; fan drifts.

Floating docks and pontoons, with any bridges or gangways not of a temporary nature used in connection therewith.

Flues; flumes and conduits; foundations, settings, gantries, platforms and stagings for plant and machinery.

Gas: holders, producers and generators, purifiers and cleansers.

Headgear: mine, quarry and pit and well.

Hydraulic accumulators.

Pits, beds and bays: casting, cooling, drop, inspection or testing,

liming, soaking, tanning or other treatment, and settling.

Racks; refuse destructors and incinerators; retorts.

Ship construction and repair: slipways, uprights, cradles, and grids.

Silos.

Stages, staitches and platforms for loading, unloading and handling material.

Stills; superheaters; tanks; towers for absorption of gases or fumes, chemical reaction, cooling, oil refining and condensing, treatment and water towers.

Transporter gantries; transversers and turntables; vats; weigh-bridges; windmills; and wireless masts (*h*). [719]

It is not necessary that the machinery and plant named be used exclusively for the purposes stated. It is sufficient if it is used or intended to be used mainly or exclusively in connection with any of those purposes. In the same way if machinery and plant is used for the purpose of manufacturing operations or trade processes, and would under the Act not be rateable, it is not to lose the benefit of exemption because it is used in connection with those operations or processes for the purpose of heating, cooling, ventilating, lighting, supplying water, or protecting from fire (*i*). [720]

PLANT OR MACHINERY IN NATURE OF A BUILDING

In addition to the plant and machinery specified, if any part of any plant or any combination of plant and machinery is, or is in the nature of, a building or structure, it is to be treated as being part of the hereditament. What is in the nature of a building, or what is a building within the intention of this provision is not defined, but gas holders, blast furnaces, coke ovens, tar distilling plant, eupolas, water towers with tanks are mentioned as included, and as forming part of the hereditament (*h*). [721]

PUBLIC UTILITY UNDERTAKINGS

It is to be noted that hereditaments which are valued by reference to the accounts, receipts or profits of the undertaking are excluded from these provisions by sect. 24 (1) of the Act relating to the rating of machinery and plant. Thus gas, water, electricity and other public utility undertakings will still be valued in the same way as before the passing of the Act. Railways also are excluded by this exception, but these with the docks and canals carried on by a railway company are now valued under the Railways (Valuation for Rating) Act, 1930 (*l*). [722]

(*h*) For further information as to the kind of plant and machinery rateable, see the award of the referee in *South Western Tar Distilleries, Ltd. v. City of Portsmouth R.A.*, reported in "Rating and Income Tax," July 21 and August 25, 1928.

(*i*) Act of 1923, Third Schedule, proviso to para. 1; 14 Halsbury's Statutes 695. Repeated in Schedule to Order of 1927 under Class 1 (*b*).

(*k*) See *ibid.*, Third Schedule, para. 4.

(*l*) 23 Halsbury's Statutes 435-484.

METHOD OF VALUATION

The only direction as to the valuation of plant and machinery rateable under the Act is that it must be deemed to be a part of the hereditament, and it is therefore to be inferred that it is not intended that the machinery and plant shall be assessed separately from the rest of the hereditament.

Properties on which a gross value is to be found are indicated in Part I. of the Second Schedule to the R. & V.A., 1925 (*m*). Though such properties contain machinery and plant, the rateable value will be ascertained by making the deductions there provided after arriving at the gross value. The Schedule does not, however, cover mills, manufactories or premises of a similar character used wholly or mainly for industrial purposes. In such instances the value to be ascertained is the rateable value (*n*). As the Act does not impose any limitations on the way in which the value of a hereditament containing plant and machinery is to be arrived at, the principles of valuation approved by the courts in the past will apply to valuations made after the passing of the Act.

The Inter-Departmental Committee of 1925 in their report (*o*) rely on the cases mentioned *ante*, p. 307, as representing the law with regard to the rating of machinery and plant in England at that time, and as the Act of 1925 introduced no new principle of valuation, but on the contrary stabilised the decisions arrived at in the two cases cited, those decisions may be accepted as representing the legal position at the present day.

The decision in *Smith v. Willesden* (*ante*, p. 307), as is pointed out in the Committee's report, was that of a Divisional Court, but it was not appealed against, and its correctness has not since been challenged in the courts. The head-note to the report in 89 L. J. (K. B.) 187 is as follows :

"The rateable value of premises used as a factory, which is equipped with machinery for use in connection with the hereditament, is measured by the rent which a hypothetical tenant would be willing to give, and a hypothetical landlord be willing to take, for the right to occupy the building and to use the machinery, it being assumed that the hypothetical landlord provided both building and machinery."

The effect of the decision, the Committee say, seems to be to abolish any distinction between "rating" machinery and "taking it into account," and to lay down that the full annual value of all the machinery and plant upon the premises must be ascertained as if it were the property of the landlord and actually part of the hereditament.

The position is the same since the passing of the Act of 1925. Allowing that the full annual value of all the machinery and plant can no longer be assessed, but only the rateable value of the machinery and plant deemed under the Act to be a part of the hereditament, the rule in *Smith v. Willesden* (*supra*), still applies to the valuation of hereditaments containing machinery and plant. [728]

(*m*) 14 Halsbury's Statutes 692.

(*n*) R. & V.A., 1925, s. 22 (1) (*b*), (*c*) ; 14 Halsbury's Statutes 646.

(*o*) Report of the Inter-Departmental Committee on the rating of machinery and plant in England and Scotland, 1925 ; Cmd. 2340, pp. 4-6.

ELECTRICAL POWER PLANT

The definition of "main transmission of power" in the Schedule to the Plant and Machinery (Valuation for Rating) Order, 1927, has been found difficult of interpretation. Para. (iii.) of the definition provides that where electrical power is transmitted to a hereditament by means of a cable or cables, in reckoning the plant or machinery to be deemed to be a part of the hereditament none is to be taken into account beyond the main switchboard. However this may appear to differentiate between electrical plant and machinery and that of other classes, opinion is that the dividing line which is drawn has been arrived at on the general principle that machinery and plant are to be deemed to be part of the hereditament when installed for the purpose of either generating electrical power, or changing electrical power of the kind generated or received to electrical power of a kind suitable for the requirements of the occupier of the hereditament; and that any machinery or plant installed for using the electrical power after it has been generated or so changed, is part of the equipment of the premises and is not rateable. So that a motor on the consumer's side of the main distribution board or boards driven by electrical power of a kind (whether as generated, received or changed) suited to the requirements of the occupier is not rateable (*p*). [724]

PROCEDURE

If the occupier wishes to know what machinery or plant, or whether any particular machinery or plant, has been treated as forming part of his premises, the rating authority, before the hearing of an objection or proposal, or the assessment committee after the hearing, as the case may be, on being required in writing, are to furnish him with particulars of the plant and machinery which has been so treated (*q*). This should be compared with the detailed statement set out in the schedule to the order of 1927, which has been summarised in this title. As this detailed statement is in substitution for the Third Schedule to the Act, any inquiry should refer to the terms and descriptions in the statement, and not to the general outline in the Third Schedule. The statement may be revised from time to time as the Minister may direct (*r*).

If on objection, or proposal, or appeal, a question is raised as to whether particular plant or machinery falls within any of the classes or descriptions specified in the detailed statement, the question may with the consent in writing of the parties be referred by the assessment committee or the court to such member of the panel of referees as may be agreed, or in default of agreement determined by the Lord Chief Justice (*s*).

The names of the members of the panel of referees are given in a circular of the Minister (*t*). Rules fixing the fees to be charged in respect of proceedings before a referee, and with respect to the procedure in connection with referees, have been made by the Lord Chief Justice (*u*).

(*p*) Cf. the joint opinion of counsel issued to local authorities by the Central Valuation Committee, July, 1928.

(*q*) R. & V.A., 1925, s. 24 (2); 14 Halsbury's Statutes 650.

(*r*) *Ibid.*, s. 24 (6).

(*s*) *Ibid.*, s. 24 (7).

(*t*) Circular 796 of June 2, 1927.

(*u*) The Plant and Machinery (Valuation for Rating) Rules, 1927; S.R. & O., 1927, No. 479, printed at 14 Halsbury's Statutes 789.

It will be noted that it is not the value of the plant and machinery which may be referred to the member of the panel to decide, but only whether such plant or machinery falls within any of the classes or descriptions specified in the detailed statement.

If the parties to the proceedings do not consent to the reference of the question to a member of the panel, the question will have to be settled by the assessment committee or quarter sessions in the ordinary way. Power is not given to the assessment committee or quarter sessions to insist on the reference of the question to a member of the panel (a). The referee appointed may, before making his award, inspect the plant or machinery in respect of which the question arises, and if required by any party to the reference he must make such inspection. The award of the referee is final and conclusive (b). [725]

VALUATION ON ACCOUNTS, ETC., OF UNDERTAKING

It has been pointed out *ante*, p. 311, that sect. 24 of the Act does not affect those hereditaments the value of which is ascertained by reference to the accounts, receipts or profits of the undertaking. There is a further important qualification in sect. 24 (10) to the effect that nothing in the section is to affect the law or practice with regard to the valuation of hereditaments of this kind, or be taken to extend the class of property which was under the law and practice in force in 1925 deemed to be provided by the occupier and to form part of his capital. [726]

LONDON

See title LONDON, RATING IN.

(a) R. & V.A., 1925, s. 24 (7); 14 Halsbury's Statutes 650.

(b) *Ibid.*, s. 24 (9).

MAGISTRATES

See JUSTICES OF THE PEACE.

MAGISTRATES' CLERKS

See JUSTICES' CLERKS.

MAIN ROADS

See ROADS CLASSIFICATION.

MAIN TRANSMISSION LINES

See CENTRAL ELECTRICITY BOARD.

MALE SERVANTS

See LOCAL TAXATION LICENCES.

MANDAMUS

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Introduction.—The expression *mandamus* is commonly used in connection with the prerogative writ of *mandamus*, which is a writ in the form of an order issuing from the High Court of Justice commanding the doing of a specified thing in the nature of the fulfilment of a public duty. It may be directed to any person, corporation or inferior court within the King's dominions charged with the performance of such a duty; and it will issue whenever there is a specific legal right, but no specific legal remedy for the enforcement of the right. Where there is no specific remedy and by reason of the want of that specific remedy justice cannot be done, then a *mandamus* will issue (*a*).

The prerogative writ of *mandamus* should be distinguished from other forms of *mandamus* which owe their existence to statute. Thus sect. 299 of the P.H.A., 1875 (*b*), originally provided that when complaint was made to the M. of H. that a local authority had made default in the performance of the duties under that Act specified in the section, the Minister should order them (*c*) to perform the duty and that the order might be enforced by *mandamus* (*d*). Again, the Board of Education may, after public inquiry, order any local education authority

(a) *R. v. Inland Revenue Commissioners; Re Nathan* (1884), 12 Q. B. D. 461, at p. 473; 16 Digest 276, 294.

(b) 13 Halsbury's Statutes 750. Repealed, except as to county borough councils, by L.G.A., 1929, s. 57 (4); 10 Halsbury's Statutes 923; replaced as to functions under P.H.A., 1936, by ss. 322—325 of that Act, which do not, however, provide for *mandamus*.

(c) If he is satisfied after inquiry that there has been a default.

(d) See, for example, *R. v. Staines Union* (1893), 62 L. J. (Q. B.) 540; 38 Digest 153, 36.

to perform any duty under the Education Act, 1921 (*e*), in respect of which the authority have made default. Such an order may be enforced by mandamus. A mandamus may also be claimed in an action to compel a local authority to pay a sum due in respect of a security issued by them under the Local Loans Act, 1875 (*f*), and an order of the M. of H. under sect. 86 (4) of the Town and Country Planning Act, 1932 (*ff*), is enforceable by mandamus. [727]

The most important form of statutory mandamus is that given by the R.S.C. Ord. 53, r. 1, which provides that the plaintiff in any action in which he claims a mandamus to command the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested, shall indorse his claim on the writ of summons (*g*).

The distinction between the prerogative mandamus and statutory mandamus is that the former is granted whenever there is a legal right, and no other specific remedy; and the latter can only be granted when the party claiming it has a right of action, the object being that the court which gives the right shall give the remedy (*h*). It has, however, been held that the action will not lie in a case where the prerogative writ has always been held to be the appropriate remedy (*i*). On the other hand, when the action for mandamus is equally convenient and appropriate, the prerogative writ will be refused (*k*). [728]

The Statutes of Limitations do not apply to an action for a mandamus (*l*); but such an action may be met by a plea of the Public Authorities Protection Act, 1893 (*m*).

Generally the rules dealt with below, which the court adopt in deciding when to grant the prerogative writ, do not apply to actions for mandamus. Thus, the court has no jurisdiction in such an action to inquire into the motives of the plaintiff (*n*). [720]

Circumstances in which Prerogative Writ will lie.—The grant of a writ of mandamus is in all cases a matter for the discretion of the court (*o*); and, although the court will not be astute to discover grounds upon which the writ can be refused (*p*), all the facts of the

(*c*) See s. 150; 7 Halsbury's Statutes 205. See also *A.-G. v. West Riding of Yorkshire County Council*, [1907] A. C. 29; 19 Digest 558, 28.

(*f*) See s. 11; 12 Halsbury's Statutes 245.

(*ff*) 25 Halsbury's Statutes 508.

(*g*) The action was created by s. 68 of the Common Law Procedure Act, 1854; 13 Halsbury's Statutes 187. This has been repealed, and the order takes its place.

(*h*) *Hush v. Beavan* (1862), 32 L. J. (Ex.) 54; 16 Digest 321, 1328.

(*i*) *Smith v. Chorley R.D.C.*, [1897] 1 Q. B. 678; 16 Digest 322, 1337 (an action to compel the defendants to approve plans).

(*k*) *R. v. Lambourne Valley Rail. Co.* (1888), 22 Q. B. D. 463; 16 Digest 292, 1044; *R. v. L. & N.W. Rail. Co.*, [1894] 2 Q. B. 512; 16 Digest 295, 1083.

(*l*) *Ward v. Lovendes* (1859), 29 L. J. (Q. B.) 40; 16 Digest 321, 1331.

(*m*) 13 Halsbury's Statutes 455; *Merrick v. Liverpool Corp.*, [1910] 2 Ch. 449; 16 Digest 327, 1403. As to the application of the Act to proceedings for the prerogative writ, see *post*, p. 324.

(*n*) *Davies v. Gas Light and Coke Co.*, [1909] 1 Ch. 248 at pp. 258, 259; S.C. (on appeal), [1909] 1 Ch. 708; 10 Digest 1128, 7942. *Cf. post*, p. 320.

(*o*) *R. v. Lambourne Valley Rail. Co.* (*supra*); *R. v. Woolwich Borough Council, Ex parte Woolwich Union* (1922), 128 L. T. 374, at p. 378; 38 Digest 634, 1532. The discretion will be exercised in accordance with the established general principles discussed in this article; see *R. v. Leicester Union*, [1899] 2 Q. B. 682, at pp. 687, 688; 16 Digest 278, 901.

(*p*) See *Rochester Corp. v. R.* (1858), E. B. & E. 1024; *per* MARTIN, B., at p. 1033; 16 Digest 276, 893. "Instead of being astute to discover reasons for not applying this general constitutional remedy, we think it our duty to be vigilant to apply it in every case in which by any reasonable construction it can be made applicable"; *R. v. Barker* (1762), 3 Burr. 1265; 16 Digest 276, 896.

case and the circumstances leading up to the application will be taken into account for the purpose of deciding in which way the discretion is to be exercised.

Before the writ will go, the applicant must show that he enjoys a legal right to have the duty performed which is sought to be enforced (*g*). The court has never exercised a general power to enforce the performance of duties on the application of anybody who chooses to apply for a writ; and the mere fact that a person is interested in the performance of a duty as a member of a class, all of whom are equally interested, will not be regarded as sufficient grounds for upholding an application. So, an application by the City of London corporation for a mandamus to compel the City of London assessment committee to make certain entries in the valuation lists was refused, because the applicants could not show that they enjoyed any greater right in the proper performance of the committee's duty than any other member of the general body of ratepayers (*r*). On the other hand, where a private individual opposed a Bill in Parliament, and obtained the insertion in the Bill of a clause protecting the rights of the general public, it was held that he had acquired such a special right in the performance of the duty imposed by the clause as would enable him to support an application for a writ of mandamus to enforce it (*s*).

In addition to showing that he enjoys a legal right, the applicant must make it appear that he is acting with a *bona fide* intention of enforcing the right, and not with some ulterior motive. This rule has been applied in practice chiefly in connection with applications to inspect documents, and is discussed below (*t*). [730]

Generally speaking, the writ will not go where there is another, and an equally effective, remedy for enforcing the right. This is not a rule of law, but one regulating the discretion of the court; and unless there is another remedy equally convenient, beneficial and effectual, mandamus will be granted, provided, of course, that the circumstances are such in other respects as to warrant the granting of the writ (*u*). In accordance with this rule, the following alternative remedies have been held to exclude the remedy by mandamus;

(*g*) *R. v. Lewisham Union*, [1897] 1 Q. B. 498, at p. 500; 16 Digest 283, 956.

(*r*) *R. v. London City Assessment Committee*, [1907] 2 K. B. 764; 16 Digest 283, 957. Cf. *R. v. Chichester (Bishop)* (1850), 29 L. J. (Q. B.) 23; 16 Digest 284, 960; *R. v. Clew* (1826), 4 B. & C. 899; 16 Digest 300, 1156, where an application for a mandamus to allow inspection of a churchwarden's accounts was refused.

(*s*) *R. v. Manchester Corpn.*, [1911] 1 K. B. 560; 16 Digest 284, 964.

(*t*) See *post*, p. 820.

(*u*) See *R. v. Stepney Borough Council*, [1902] 1 K. B. 317; 16 Digest 292, 1049, where the appeal to the Treasury by a person aggrieved by a decision of the council in respect of compensation for loss of office was held not to exclude mandamus, because the council, having considered themselves bound by a rule of the Treasury, had not decided the case at all. See also *R. v. Leicester Union*, [1899] 2 Q. B. 692; 16 Digest 278, 901, where it was held that the presence of a statutory power in the Local Government Board to appoint a vaccination officer, on the default of the guardians of a union, did not prevent a mandamus going to compel the guardians to appoint on the ground that the remedy of filling the vacancy was not a legal remedy at all, and *R. v. Poplar Borough Council (No. 1)*, [1922] 1 K. B. 72; 16 Digest 293, 1066, where it was held that a remedy by way of distress for non-payment of a precept was inadequate and did not prevent a mandamus going to compel the council to comply with the precept. See also *R. v. Woolwich Borough Council, ex parte Woolwich Union* (1922), 128 L. T. 374; 38 Digest 634, 1532; *R. v. Stepney Corpn., Ex parte Walker & Sons, Ltd.* (1934), 148 L. T. 180; Digest (Supp.).

petition of right (a), *quo warranto* (b), *quare impedit* (c), appeal to quarter sessions (d), appeal to another tribunal (e) and election petition (f).

A remedy by way of indictment does not always preclude the issue of the writ; for such a remedy results, not in the enforcement of the right, but only in the punishment of its invasion (g). [781]

The rule that mandamus will not go when another remedy is available is closely connected with the rule that where a statute creates a duty and at the same time prescribes a method whereby the duty is to be enforced, performance of the duty will not be enforced by any method other than that prescribed (h). Thus the P.H.A., 1875, imposed a duty upon local authorities to provide necessary sewers for draining their district, and gave a remedy by way of complaint to the M. of H. where default was made in performance of the duty. It was held that the presence of this statutory remedy precluded the issue of a mandamus (i). [782]

The writ of mandamus will not be allowed to go, if it will be ineffective. Accordingly an application has been refused where the person against whom it was sought had powers which would have enabled him to render the writ inoperative (k); where such person

(a) *Re Nathan* (1884), 12 Q. B. D. 461; 16 Digest 276, 894.

(b) *R. v. Colchester Corp.* (1788), 2 Tenn. Rep. 259; 16 Digest 800, 1132; *R. v. St. Martin's Guardians* (1851), 17 Q. B. 149; 16 Digest 355, 1854.

(c) *R. v. Chester (Bishop)* (1786), 1 Term Rep. 396; 16 Digest 276, 895.

(d) *R. v. Smith* (1873), L. R. 8 Q. B. 146; 16 Digest 296, 1033; *R. v. Bristol Licensing J.J.* (1893), 68 L. T. 225; 16 Digest 296, 1090; *R. v. London City Assessment Committee*, [1907] 2 K. B. 764; 16 Digest 288, 937. But mandamus may be granted when a decision is given without reasons, and the appellant does not know the grounds of the decision and so cannot shape his appeal; see *R. v. Thomas*, [1892] 1 Q. B. 426, per HAWKINS, J., at p. 429; 16 Digest 296, 1092.

(e) *R. v. L.C.C., Ex parte Thornton* (1911), 27 T. L. R. 422; 16 Digest 801, 1143 (an appeal to the magistrate under the L.C.C. (General Powers) Act, 1921, s. 11 (8)); *R. v. Port of London Authority, Ex parte Kynoch*, [1919] 1 K. B. 176; 16 Digest 287, 1003 (appeal to the Board of Trade under the Port of London Act, 1908, s. 7 (2)). See now the Port of London (Consolidation) Act, 1920, s. 248; 18 Halsbury's Statutes 674.

(f) *R. v. Dublin Town Clerk* (1909), 43 I. L. T. 169; Digest (Supp.). The right to grant a petition under s. 87 (1) (d) of the Municipal Corporations Act, 1882, was held to be inapplicable where the complaint was that the whole election was a contravention of the Act, and so was held not to exclude the grant of a mandamus. And see *Re Barnes Corp., Ex parte Hutter*, [1933] 1 K. B. 668; Digest (Supp.).

(g) *R. v. Severn and Wye Rail. Co.* (1819), 2 B. & Ald. 646; 16 Digest 290, 1119. But this is not so when the usual remedy is by way of indictment; for (semble) in such cases it is assumed that punishment will indirectly bring about performance of the duty. See *R. v. St. Mary, Norwich (Inhabitants)* (1791), Nolan, 28; 16 Digest 298, 1111; *R. v. Surrey County Treasurer* (1819), 1 Chit. 650; 16 Digest 298, 1113; *R. v. Oxford and Witney Turnpike Roads Trustees* (1840), 12 Ad. & El. 427; 16 Digest 298, 1116; *Ex parte Downton Overseers* (1858), 27 L. J. (M. C.) 281; 16 Digest 299, 1117. See also *R. v. Poplar Borough Council (No. 1)* (note (u)), p. 317, per SCRUTTON, L.J., pp. 93, 94.

(h) This rule is, it is thought, merely a rule of interpretation of statutes. The court, having come to the conclusion as a matter of construction of the particular Act that the Legislature intended the remedy given by that Act to be the only one available, will decline to grant a mandamus. Presumably it would make no difference in such a case that the statutory remedy was less effective and convenient; although the fact would be a cogent argument against the contention that Parliament intended the statutory remedy to be exclusive.

(i) *Pasmore v. Oswaldtwistle Urban Council*, [1898] A. C. 387; 16 Digest 302, 1150.

(k) *R. v. Azbridge Corp.* (1777), 2 Cowp. 523; 16 Digest 298, 1097, when a mandamus to restore a town clerk to his office was refused because (*inter alia*) the court was satisfied that the corporation would remove him again at once if he were restored.

would have been wholly unable to comply with the writ (*l*); where the terms of the writ could not have been carried out because to do so would have involved the contravention of a statute (*m*); and where obedience to the writ would not have achieved a result different from that which was complained of (*n*). [733]

The court will not generally grant a mandamus unless the party seeking it has demanded the performance of the act which is sought to be enforced, and has been met with a refusal (*o*). There must be evidence that the party complained of knew what he was required to do, and so had an opportunity of considering whether or not he would do it. This rule does not apply where the complaint is in respect of the omission to do an act which must be done within a specified time and the time has elapsed (*p*). There is no need to prove an express refusal. It will be enough if the court is satisfied on the evidence that the party complained of has considered the matter and definitely decided not to do the act (*q*). [734]

Duties for which Prerogative Writ will lie.—The grant of a writ of mandamus being in all cases a matter for the discretion of the court, it is impossible to frame any general definition of the nature of the cases in which the remedy will be given. Those in which the writ has gone, so far as they concern local authorities, may be classified under the following heads:

Restoration, Admission and Election to Offices.—The writ will lie for the restoration of a person to an office or franchise of a public nature, *e.g.* to the office of mayor, alderman, town clerk, recorder or Burgess (*r*). Moreover, where a person has a right to an office or franchise of which he has never had actual possession, the writ will lie to admit him. Thus it has been granted to compel the admission to the office of alderman of the City of London of a person duly elected

(*l*) *R. v. L. & N.W. Rail. Co.* (1851), 16 Q. B. 864; 16 Digest 290, 1029, where a mandamus to compel a railway company to exercise their powers of compulsory purchase was refused on the ground that the compulsory powers had expired.

(*m*) *R. v. Eastbourne Corpn.* (1900), 83 L. T. 338; 16 Digest 290, 1023, in which case a mandamus to compel the corporation to approve building plans was refused because the buildings if erected according to the plans would have contravened a statute.

(*n*) *Ex parte Joyce* (1854), 23 L. J. (M. C.) 153; 16 Digest 289, 1014, where a mandamus to hold an election, the application being based on an alleged improper rejection of votes, was refused because it did not appear that the result of the poll would have been different even if the votes had been accepted. But it is thought that the court, before refusing a mandamus on this score, must be satisfied that the result will not be different. So when the L.C.C. decided that they would refuse all future applications for a licence to sell literature in parks under their control, a mandamus was granted ordering them to hear and determine a particular application. *R. v. L.C.C., Ex parte Corrie*, [1918] 1 K. B. 68; 16 Digest 810, 1219.

(*o*) *R. v. Brecknock and Abergavenny Canal Co.* (1835), 3 Ad. & El. 217; 16 Digest 286, 992; *R. v. Bristol and Exeter Rail. Co.* (1843), 4 Q. B. 162; 16 Digest 285, 982; *R. v. Wilts and Berks Canal Co.* (1835), 3 Ad. & El. 477; 16 Digest 286, 985; *R. v. Bodmin Corpn.*, [1892] 2 Q. B. 21; 16 Digest 329, 1493.

(*p*) *R. v. Stoke-on-Trent Town Clerk*, [1912] 3 K. B. 518, at pp. 531, 532; 16 Digest 284, 965.

(*q*) But this must be clearly shown. So in *R. v. Brecknock and Abergavenny Canal Co.* (*supra*), the company in reply to the alleged demand wrote asking for an indemnity; and it was held that this was not such a distinct refusal as justified the making of an application without a further formal demand. So too in *R. v. Wilts and Berks Canal Co.* (*supra*), where a demand for inspection of certain books was met by an intimation that the defendants would take time to consider the matter.

(*r*) *R. v. London Corpn.* (1738), 2 Term Rep. 182 n.; 16 Digest 278, 993.

by a court of wardmote (s); and to admit to the office of registrar of a corporation a person who had been duly elected (t). [735]

Again the writ will lie to secure an election to an office of a public nature. So it has gone to compel an election to fill up a vacancy in the number of canons of a cathedral (u); and to secure the election of churchwardens (a). This rule does not apply when the number of members of the body to which election is sought is indefinite. Thus when a charter of a corporation empowered the mayor, recorder and alderman of a borough to nominate so many and such persons to be free burgesses of the borough as they should please, it was held that a mandamus would not lie to compel an election on the ground (*inter alia*) that the number of burgesses who ought to be elected was not specified (b).

A mandamus to restore, admit or elect to office will go only in cases where the office is vacant, for the application for the writ is based on the assumption that nobody is holding the office (c). Where the office is full, proceedings by way of *quo warranto* or election petition should be instituted. This rule does not apply where the office in question has been filled by a void election, or by one which was merely colourable. In such cases the court takes the view that there has been no election at all, and that the office must consequently be regarded as still vacant (d). [736]

Delivery, Production, and Inspection of Documents.—Under this head a mandamus can be obtained only in cases where there is no litigation pending between the applicant and the respondent. Where there is such litigation, the proper course is to rely on the rights of discovery and inspection given by the R.S.C., Ord. 81. The writ will go to order the delivery up of books and papers of a public nature; thus the overseer of a parish has been commanded to deliver up parish books to his successor (e).

The writ may also be granted on the application of a person seeking the production and inspection of particular books and documents of a public nature (f). The general rule is that before such an application will be granted the applicant must show that he has a direct and personal interest in obtaining inspection of the documents in question. Mere curiosity is not sufficient, and the presence of an ulterior motive is generally fatal to the application (g). Thus the writ has been refused to a councillor on the ground that his object in making the application was to help a third party in litigation against the council (h). On the other hand, it has been held that the mere fact that a councillor might make use of a document for purposes adverse to the policy of

(s) *R. v. London Corpn.* (1829), 4 Man. & Ry. (K. B.) 36; 13 Digest 805, 374.

(t) *R. v. Bedford Level Corpn.* (1805), 6 East 356; 16 Digest 291, 1042.

(u) *Chichester (Bishop of) v. Harward and Webber* (1787), 1 Term Rep. 650; 19 Digest 238, 186.

(a) *R. v. Wix (Inhabitants)* (1832), 2 B. & Ad. 197; 19 Digest 266, 491.

(b) *R. v. Fowey Corpn.* (1824), 2 B. & C. 584; 13 Digest 822, 579.

(c) See *R. v. Chester Corpn.* (1865), 25 L. J. (Q. B.) 61; 16 Digest 315, 1269.

(d) *Ibid.* See also *Re Barnes Corpn., Ex parte Hutter*, [1933] 1 K. B. 668; Digest (Supp.).

(e) *R. v. Fox* (1838), 1 Will. Woll. & H. 4; 16 Digest 316, 1279.

(f) See *R. v. Southwold Corpn., Ex parte Wrightson* (1907), 97 L. T. 481; 13 Digest 303, 346, per ALVERSTONE, C.J., at p. 432.

(g) This is a general rule in all mandamus proceedings; see *ante*, p. 317. The rule is best exemplified by the cases cited under this head.

(h) *R. v. Hampstead Borough Council, Ex parte Woodward* (1917), 116 L. T. 218; 13 Digest 302, 341.

the council is not a sufficient ground for refusing mandamus to inspect (i). [787]

This general rule as to direct and personal interest applies even where the applicant is not compelled to rely on a common law right to inspect which arises by virtue of his interest, but belongs to a class of persons who are given by statute an express right to inspect, or to inspect and take copies of specified documents. The existence of such a statutory right will not lead the court to grant the writ as a matter of course (k). Thus it was provided that every parochial elector of a parish of a rural district might at all reasonable times, without payment, inspect and take copies of and extracts from all books, accounts and documents belonging to or under the control of the R.D.C. (l). Notwithstanding this, a mandamus to allow an elector to inspect and take copies of a case submitted by the authority to counsel and his opinion thereon has been refused on two occasions; on one (m) because it was held that no legitimate purpose would be served by ordering inspection, and on the other (n), because the applicant desired to inspect the documents not as a ratepayer, but as a prospective litigant and for the purpose of obtaining evidence to support his claim. [788]

Compelling Public Officials and Bodies to carry out Duties.—The writ will lie to compel a public official or a public body to perform any duty with which they have been charged either by statute or otherwise; and this even though the time laid down by the statute for the performance of the duty has elapsed (o). Thus the writ has gone to enforce the levy of a rate to meet expenses incurred in the current rating year (p); and also, if reasonable cause can be shown, for the levy of a rate which is necessary to discharge liabilities incurred in previous rating years (q). Again, the writ has gone to compel the appointment

(i) *R. v. Southwold Corpn., Ex parte Wrightson* (1907), 97 L. T. 431; 13 Digest 808, 340.

(k) Unless, of course, the language of the statute itself made it clear that the right to inspect is to be exercisable in all circumstances.

(l) L.G.A., 1894, s. 58 (5); 10 Halsbury's Statutes 814. See now L.G.A., 1903, s. 283; 26 Halsbury's Statutes 455.

(m) *R. v. Bradford-on-Avon R.D.C., Ex parte Thornton* (1908), 99 L. T. 89; 13 Digest 808, 354.

(n) *R. v. Godstone R.D.C.*, [1911] 2 K. B. 465; 13 Digest 349, 379. It should be noticed that the writ will not be granted against a person who is in an inferior or ministerial office, and who is bound to obey the orders of a competent superior authority. So, the writ was refused where it was sought to compel a county treasurer to obey an order of quarter sessions (*R. v. Shaw* (1794), 5 Term Rep. 549; 16 Digest 307, 1190), and where it was sought to compel a borough treasurer to pay the costs of a prosecution in pursuance of an order of the judge on assize (*R. v. Jeyes* (1835), 3 Ad. & El. 410; 16 Digest 307, 1194). This rule, however, does not apply unless it is clear from the evidence that the inferior officer has in fact received an order from a competent authority. See *R. v. Payn* (1837), 6 Ad. & El. 392; 16 Digest 307, 1188, and *R. v. Oscestry (Treasurer)* (1848), 12 Q. B. 239; 16 Digest 318, 1320.

(o) See *Glossop v. Heston and Isleworth Local Board* (1870), 12 Ch. D. 102, at p. 115; 16 Digest 816, 1203; *R. v. Stepney Corpn.*, [1902] 1 K. B. 317, at p. 321; 16 Digest 292, 1049.

(p) *R. v. Norfolk Sewers Commissioners* (1850), 15 Q. B. 540; 41 Digest 50, 429; *R. v. St. George the Martyr, Southwark, Vestry* (1892), 61 L. J. (Q. B.) 398; 16 Digest 293, 1065.

(q) *R. v. Leigh R.D.C.*, [1898] 1 Q. B. 836; 16 Digest 322, 1334, when a writ was granted in October, 1897, to enforce a levy to meet the amount of a judgment recovered in May, 1897, in respect of an obligation which accrued due two years previously. Cf. *Croydon Corpn. v. Croydon R.D.C.*, [1908] 2 Ch. 321; 38

of a person to make a provisional valuation list; and to compel repayment by a borough of an amount due to the Treasury (r). So, too, the treasurer of a borough has been ordered to pay the expenses of a prosecution in accordance with a direction given by a judge of assize (s); and the Lord Mayor of London to take recognisances of a prosecutor to prosecute by way of indictment in accordance with the Vexatious Indictments Act, 1859 (t); and a returning officer to countermand a notice of a poll for the election of county councillors in pursuance of the provisions of the Ballot Act, 1872 (u).

A writ of mandamus will not go to compel a local authority to exercise a statutory power which is merely permissive, and which does not impose upon them any positive duty (a). Where, however, a statute confers a discretionary power, and in exercising their discretion the authority have taken into their consideration matters which they could not properly consider, a mandamus will issue to compel them to determine in accordance with law (b). [739]

Commanding Inferior Tribunals to Exercise Jurisdiction.—By a number of statutes local authorities are given a power or duty to decide questions affecting the rights of individuals (c). In such cases the authority in coming to their decision act in a quasi-judicial capacity, and a failure or refusal by them to exercise their jurisdiction rightly may be corrected by mandamus. The general rule in all these cases is that the writ will only go to command the authority to hear and determine the particular matter upon which they have a duty to give a decision. No writ will be issued commanding in what manner the authority are to decide. This rule applies even where the authority have come to a decision which is erroneous, not only as to the facts, but also as to the law. Where the jurisdiction has in fact been exercised, the court will not interfere. Thus the writ will not issue to order a local authority who have power to approve or disapprove of building plans, to approve plans which they have rejected on reasonable grounds and in good faith. This is so even where the decision of the authority was based upon an erroneous view of the proper construction of the statute; as where the refusal to approve plans was based on an opinion, for which there was no legal foundation, that the proposed building would contravene sect. 3 of the P.H. (Buildings in Streets) Act, 1888 (d). On the other hand, where the authority, having no objection to the plans themselves, seek to attach

Digest 508, 1280, where a liability which accrued in 1904 was left unpaid owing to a mistake of the creditor and debtor, and the court refused a writ. See also *Wolstanton United U.D.C. v. Tunstall U.D.C.*, [1910] 2 Ch. 347; 38 Digest 508, 1281.

(r) *R. v. Maidenhead Corpn.* (1882), 9 Q. B. D. 404; 38 Digest 502, 1226.

(s) *R. v. Oswestry (Treasurer)* (1848), 12 Q. B. 239; 16 Digest 318, 1309.

(t) *R. v. London (Lord Mayor)*, *Ex parte Gostling* (1886), 54 L. T. 646; 14 Digest 201, 1807.

(u) *R. v. Stewart*, [1898] 1 Q. B. 552; 20 Digest 139, 1133.

(a) *R. v. Marshland Smeeth and Fen District Commissioners*, [1920] 1 K. B. 155, at p. 165; 88 Digest 37, 220.

(b) *R. v. St. Pancras Vestry* (1890), 24 Q. B. D. 371; 16 Digest 310, 1217.

(c) A typical example is the power to decide applications for leave to develop during the interim period under the Town and Country Planning Act, 1932.

(d) 13 Halsbury's Statutes 810. See *R. v. Eastbourne Corpn.* (1900), 83 L. T. 338; 16 Digest 200, 1023, and *Smith v. Chorley R.D.C.*, [1897] 1 Q. B. 678; 16 Digest 322, 1337; *R. v. Chiswick U.D.C.*, *Ex parte Brickell* (1908), 72 J. P. 165; 16 Digest 290, 1024; *R. v. Tynemouth Corpn.*, [1911] 2 K. B. 301; 16 Digest 285, 973; *R. v. Cambridge Corpn.*, *Ex parte Cambridge Picture Playhouses*, [1922] 1 K. B. 250; 38 Digest 188, 267.

to their approval certain conditions which they have no right to attach under the statute allowing them to approve or disapprove, a mandamus will lie to compel them to give their approval (e). [740]

The writ will lie in all cases in which there has been a refusal by the authority to exercise the quasi-judicial jurisdiction with which they have been invested. The refusal may be express, or may be implied from conduct. Thus, where the L.C.C. passed a resolution that they would not in future entertain applications for licences to sell reading matter in the public parks under the council's jurisdiction, it was held that their conduct amounted to a refusal to exercise their jurisdiction and a mandamus was granted ordering them to hear and determine the application in accordance with law (f). On the other hand, it has been held that an authority do not decline jurisdiction if they intimate to a particular applicant what their policy is and after hearing him decide against him in accordance with the policy (g). [741]

Miscellaneous Cases.—The writ has been issued to compel a corporate body to affix the common seal to a document (h); to compel the payment by a corporation of a sum of money owing under an agreement which was unenforceable (i); to compel a mayor and corporation to exercise an ancient privilege of holding a court (k); and to compel the surrender of the regalia of a corporation (l). A mandamus will not lie to command a person to take legal proceedings against another person (m). [742]

Procedure.—Sect. 5 of the Administration of Justice (Miscellaneous Provisions) Act, 1933 (n), contemplates that as soon as may be after the commencement of the Act rules of court shall be made: (i.) providing for the abolition of the procedure of motion for an order *nisi* in cases where the issue of the prerogative writ is sought; (ii.) requiring, except in such cases as may be specified in the rules, that leave shall be obtained before an application is made for an order absolute for the issue of such a writ; (iii.) requiring that where leave is obtained for making such an application, no relief shall be granted and no contention relied upon except the relief and contentions specified when the application for leave was made; and (iv.) for the assimilation of procedure.

No rules have yet been made under this section. The law stated in the text will no doubt be considerably modified by the rules when they come into force. [743]

The Third and Final Report of the Business of the Courts Committee made suggestions as to how the procedure should be amended (o).

(e) *R. v. Tynemouth R.D.C.*, [1896] 2 Q. B. 451; 26 Digest 554, 2497.

(f) *R. v. L.C.C., Ex parte Corrie*, [1918] 1 K. B. 68; 16 Digest 310, 1210.

(g) *R. v. Port of London Authority, Ex parte Kynoch*, [1919] 1 K. B. 176, see per BANKES, L.J., at pp. 183, 184; 16 Digest 287, 1003.

(h) *R. v. Windham* (1770), 1 Cowp. 377; 13 Digest 288, 189.

(i) *R. v. Bristol and Exeter Rail. Co.* (1845), 9 J. P. Jo. 309; 16 Digest 208, 1056, where the agreement was unenforceable for lack of the corporate seal.

(k) *R. v. Hastings Corpn.* (1822), 5 B. & Ald. 692, n.; 16 Digest 127, 253; *R. v. Wells Corpn.* (1836), 4 Dowl. 562; 16 Digest 127, 255. In both cases the privilege had not been exercised for many years.

(l) *R. v. Todd* (1838), 2 Jur. 565; 13 Digest 319, 538.

(m) *R. v. Southampton Port Commissioners* (1870), L. R. 4 H. L. 449, at p. 485; 16 Digest 335, 1536.

(n) 26 Halsbury's Statutes 642.

(o) Cmd., 5000, 1930, pp. 5, 6.

Under the old rules an application for the prerogative writ of mandamus must be made by motion for an order *nisi* to the divisional court of the King's Bench Division. During vacation an application in urgent matters may be made to the judge in chambers by summons to show cause. The application is generally made *ex parte*. The motion can be moved only by counsel.

The writ will not be granted unless it is applied for with due dispatch. Any delay in instituting proceedings, unless satisfactorily accounted for, will be fatal to the success of an application. Where the writ is asked for to compel the performance of a duty imposed by statute upon a public authority, proceedings need not be begun within the six months prescribed by the Public Authorities Protection Act, 1893; for it has been held that an application for the prerogative writ is not an "action, prosecution, or other proceeding" within the scope of that Act (*p*). [744]

The motion must be supported by affidavits showing that the applicant is *prima facie* entitled to the relief claimed, and these should be filed in the Crown Office Department of the Central Office of the Supreme Court. Care should be taken to define with precision the order which is asked for (*q*). On the motion an affidavit must be produced, made by the applicant himself, or his solicitor, proving at whose instance the motion is made (*r*).

If the affidavits are defective, in that they do not show a *prima facie* case for the issue of a writ, the applicant will not be allowed to make a second application for the same writ on fresh affidavits alleging additional facts. He must come prepared with full and sufficient material to support his application, and if his materials are incomplete he will not be allowed to come again (*s*). [745]

If a *prima facie* case is made out, a rule *nisi* will be granted, calling upon the party alleged to be in default to show cause why a writ should not issue commanding him to fulfil the duty which he has omitted to perform. Notice must be given by the order *nisi* to every person who, by the affidavits upon which the order is moved, appears to be interested in or likely to be affected by the proceedings, and to any person who, in the opinion of the court or judge, ought to have such notice (*t*). The order should be served upon every person to whom notice is given by the order, as well as upon the person who by its terms is required to show cause (*a*). So, in a rule *nisi* for a mandamus to elect to a corporate office, notice should be given by the order to the person, if any, who is in possession of the office, and he should be served with the order (*b*).

(*p*) *R. v. Heriford Union, Ex parte Pollard* (1914), 111 L. T. 716; 16 Digest 325, 1376. But the Act applies to an action for a statutory mandamus, and to proceedings in which the applicant puts in a reply to the return claiming damages; see *R. v. Marshland Smith and Fen District Commissioners*, [1920] 1 K. B. 155, at p. 172; 88 Digest 121, 886.

(*q*) *Local Government Commissioner v. Kaderbhai*, [1991] A. C. 652; Digest (Supp.).

(*r*) Crown Office Rules, r. 234. The court will not allow an affidavit which has been wrongly intitled to be amended, unless an injustice would be done if leave were not given. In such a case, however, a second application may be brought on an application rightly intitled.

(*s*) *R. v. Bodmin Corpn.*, [1892] 2 Q. B. 21, per DAV, J., at p. 23; 16 Digest 320, 1438.

(*t*) Crown Office Rules, r. 50.

(*a*) *Ibid.*, r. 51.

(*b*) *R. v. Bankes* (1764), 3 Burr. 1452; 10 Digest 323, 1351.

In addition to the person who by the order *nisi* is required to show cause, and the persons (if any) to whom notice is directed to be given by the order, any person who can satisfy the court or judge that he is affected by the application for the writ may show cause against the order *nisi* (c). Evidence against the order must be given by affidavit. The applicant may obtain copies of such affidavits on payment of the usual charges (d). Additional affidavits may, with the leave of the court or judge, be read by either side dealing with any new matter that may be alleged in the affidavits of the other side (e). But no additional affidavit will be allowed until such time as the court or judge has investigated the case so far as to be in a position to decide whether or not any new matter has been alleged. If sufficient cause is shown against the issue of the writ, the order *nisi* will be discharged. If sufficient cause is not shown, the order will be made absolute for the issue of the writ. [746]

The writ must be in the prescribed form (f), with such variations as are required by the circumstances (g). Generally, the writ commands the person or persons to whom it is directed to perform the duty in question or to show cause to the contrary in the return to the writ. The court or judge may, however, direct that the writ shall be peremptory in the first place. A peremptory writ is only issued where there is no question of fact in issue between the parties (h).

The terms of the writ should follow strictly the terms of the order absolute in pursuance of which it is issued. If there is a material discrepancy between the two, the writ may be quashed. No amendment can be made in the order so as to reconcile it with the terms of the writ, after the latter has issued; nor can the writ itself be amended, except on some point of no importance, such as the names or title of the person to whom it is directed (i). If it be doubtful to whom the writ should be directed, the applicant must make a choice at his peril.

The mandatory part of the writ may be in general terms. Indeed, when a statute imposes a duty, and is silent as to the method of carrying out the duty, it is generally held that the method is left to the discretion of the person on whom the obligation is imposed; and in such a case a writ which purports to prescribe a specific method will be void (k). [747]

For the method by which service of the writ should be effected, reference should be made to the Crown Office Rules, rr. 54, 55.

The writ contains a command for a return to be made to it. This may be ordered to be made forthwith, or at such time and upon such terms as the court thinks fit (l). To a peremptory writ the only return

(c) Crown Office Rules, r. 52.

(e) *Ibid.*, r. 9.

(g) *Ibid.*, r. 37.

(h) See *Pritchard v. Bangor Corpn.* (1888), 13 App. Cas. 241, at p. 246; 10 Digest 381, 1435.

(i) *R. v. Derbyshire Rail. Co.* (1854), 23 L. J. (Q. B.) 333; 16 Digest 336, 1554. Cf. *R. v. Ripon Corpn.* (1700), 2 Salk. 433; 13 Digest 319, 536, where the writ was quashed because the name was altogether wrong.

(k) *Lee District Board v. L.C.C.* (1899), 82 L. T. 306; 41 Digest 27, 211; *R. v. Marshland Smeeth and Fen District Commissioners*, [1920] 1 K. B. 155; 38 Digest 37, 230.

(l) Crown Office Rules, r. 57. See *ibid.*, r. 213, as to when the return should be made. The return should be in the prescribed form, as to which see *ibid.*, Appendix, Form 38.

(d) *Ibid.*, r. 10.

(f) *Ibid.*, Appendix, form 37.

that can be made is unconditional obedience. In other cases, the return may state obedience to the writ, or may allege reasons for non-compliance with its terms. A return which sets up reasons for non-compliance should be drafted in particular, direct and intelligible terms (*m*). [748]

On the return, the applicant for the writ may put in a pleading as if the return were a defence delivered in an ordinary action; and the pleading and all subsequent proceedings, including pleadings, trial, judgment and execution proceed as if in an action (*n*). The effect of this rule is to put all the proceedings subsequent to the return on the same footing as an action at law. The applicant may in the reply to the return claim damages, and such damages may be recovered if the claim is a good one (*o*). The rules of the Supreme Court relating to amendment, execution, form, notices and effect of non-compliance, apply to proceedings on the Crown side as far as they are applicable (*p*).

The validity of the writ may be tested by a motion to quash (*q*); but objection to validity may also be taken at any stage in the proceedings subsequent to the return (*r*).

If the applicant is successful in the proceedings subsequent to the return, a peremptory mandamus will issue in the same form as the original writ except that the word "peremptory" is inserted and the words allowing cause to be shown are omitted. The original writ is enforceable in the terms in which it was originally issued or not at all, and the form will not be altered so as to meet the circumstances of the case as shown upon the proceedings on the return (*s*). [749]

A failure to make a return to a writ which is not peremptory; or a failure to comply with, or the making of a return to, a peremptory writ, is punishable by attachment for contempt (*t*). A respondent on proceedings for attachment may object to the validity of the writ, and, if his objection is upheld, no writ of attachment can go (*u*). Attachment cannot issue against a corporation, and a mandamus addressed to a corporation is regarded as addressed to every individual corporator, unless indeed the actions of the corporation are directed by a separate governing body (*a*). [750]

All decisions on the Crown side of the King's Bench Division may be made the subject-matter of an appeal to the Court of Appeal (*b*), from whom a further appeal lies to the House of Lords with the leave of the Court of Appeal or of the House of Lords. The Rules of the

(*m*) *R. v. Chester City* (1694), 5 Mod. Rep. 10; 16 Digest 323, 1345; *R. v. Ouse Bank Commissioners* (1835), 3 Ad. & El. 544; 16 Digest 338, 1592.

(*n*) Crown Office Rules, r. 125. The documents in the proceedings are filed at the Crown Office, *ibid.*, r. 27; and the proceedings are subject to the Crown Office Rules, *ibid.*, r. 125.

(*o*) *R. v. Marshland Smeth and Fen District Commissioners*, [1920] 1 K. B. 155; 38 Digest 87, 220.

(*p*) See Crown Office Rules, rr. 207, 259, 260, 263, 264.

(*q*) *ibid.*, r. 265.

(*r*) *R. v. Marshland Smeth and Fen Commissioners*, *supra*.

(*s*) *Local Government Board for Ireland v. R.*, [1903] A. C. 402, at p. 405.

(*t*) An application for a writ of attachment is made by notice for an *arrest*. See Crown Office Rules, rr. 240-242.

(*u*) *R. v. Poole Corpn.* (1848), 1 Gal. and Dav. 728; 16 Digest 337, 1566.

(*a*) *R. v. Poplar Borough Council* (No. 2), [1922] 1 K. B. 95; 18 Digest 411, 1307, where it was held that a writ addressed to a corpn. "and every of them" was irregular, but that the irregularity was one which could be and had, on the facts, been waived.

(*b*) Supreme Court of Judicature (Consolidation) Act, 1925, s. 27 (1); 4 Halsbury's Statutes 159.

Supreme Court apply to appeals from proceedings on the Crown side (c). An appeal lies from the exercise by the court of their discretionary jurisdiction to allow a mandamus to issue, but on such an appeal the Court of Appeal requires to be satisfied that the discretion has been wrongly exercised before it will interfere with the decision of the lower court (d). On the other hand, the grant of a peremptory writ is regarded as a determination of the rights of the parties, and is open to appeal just as if it were a decision in an action (e). [751]

Costs.—The Rules of the Supreme Court which make costs a matter for the discretion of the court or judge (f) apply to all proceedings on the Crown side, including proceedings on mandamus (g). The general rule which will guide the court in the exercise of its discretion is that costs will be given to the successful party, unless there is some special reason why a different order should be made. Circumstances which have been held to justify a departure from the ordinary rule are: (1) where the necessity for the proceedings arose from the default of the applicant for the writ (h); (2) where the defendants succeeded in proceedings on the return to the writ on a point which they could have taken on showing cause why the writ should not issue (i); (3) where the whole matter did not, in the view of the court, justify the applicant in instituting proceedings (k); (4) where the writ issues against a person who has done all he could to discharge a public duty in a right and proper manner (l); and (5) in cases where the proceedings are taken to correct the decision of an inferior tribunal, where the decision was correct in the light of the law as it was understood at the time, but turns out to be incorrect as a result of a new judicial pronouncement in the proceedings on the mandamus (m), or where the wrongful decision was arrived at without any influence from the person in whose favour it was given (n). The rule that a successful party is *prima facie* entitled to his costs applies to all persons who are bound to appear to show cause against the issue of the writ (o). So, on the discharge of an order *nisi* calling upon licensing justices to show cause why a writ

(c) Crown Office Rules, r. 206. The time for launching an appeal from an order granting or refusing a mandamus is six weeks; see *R. v. Westminster Assessment Committee*, [1917] 2 K. B. 215; 16 Digest 347, 1740. Where an *ex parte* application for a rule *nisi* has been refused by the Divisional Court, an *ex parte* application may be made for a rule *nisi* to the Court of Appeal within four days of such refusal, or within such extended time as the court or judge, or the Court of Appeal may allow; see R.S.C. Ord. 58, r. 10. If the appeal succeeds, cause must, it seems, be shown against the order *nisi* in the Court of Appeal.

(d) *R. v. Maldenhead Corpn.* (1882), 9 Q. B. D. 404, at p. 503; 38 Digest 592, 1226.

(e) *R. v. All Saints, Wigan, Churchwardens* (1876), 1 App. Cas. 611; 16 Digest 277, 399.

(f) See R.S.C. Ord. 65.

(g) Crown Office Rules, r. 261.

(h) *R. v. Burleigh Board of Health* (1850), 1 L. T. 92; 16 Digest 350, 1796, where the applicant, having brought a successful action against the board, omitted to sign judgment for two years, with the result that it was necessary for the board to levy a rate, which they decided to do without the protection of an order of the court.

(i) *R. v. St. Pancras* (1843), 2 Dowl. (n. s.) 955; 16 Digest 351, 1805.

(k) *R. v. Yorkshire North Riding Appeal Tribunal, Ex parte Barker* (1916), 86 L. J. (K. B.) 599; 16 Digest 350, 1788.

(l) *R. v. Cox* (1884), 48 J. P. 440; 30 Digest 42, 325; *R. v. Harding* (1890), 6 T. L. R. 175; 16 Digest 347, 1741.

(m) *R. v. Harden* (1854), 23 L. J. (Q. B.) 127; 16 Digest 350, 1795.

(n) *R. v. Cheshire J.J.* (1848), 5 Dow. & L. 426; 16 Digest 352, 1819.

(o) *R. v. West Riding J.J.*, [1898] 1 Q. B. 503, at p. 512; 16 Digest 349, 1773.

should not issue against them ordering them to hear and determine an appeal, not only are the successful justices entitled to their costs, but so also are successful objectors who appeared before them (p). On the other hand, a person who appears in this way to show cause against the issue of a writ against someone else may, in the discretion of the court, be ordered to pay costs, if the order is made absolute or the applicant obtains judgment in the proceedings on the return (q). [752]

London.—For examples of provisions for enforcement by mandamus of duties of local authorities under enactments relating to London, see sects. 292, 295 of the P.H. (London) Act, 1936 (r).

Sect. 225 of the Municipal Corporations Act, 1882 (s), as applied by sect. 75 of the L.G.A., 1888 (t), to the L.C.C. and their members, is in part replaced by sect. 86 of the L.C.C. (General Powers) Act, 1934 (u). [753]

(p) *R. v. West Riding JJ.*, [1898] 1 Q. B. 503, at p. 512; 16 Digest 340, 1773.

(q) Crown Office Rules, r. 52.

(r) Replacing ss. 101, 135 of the Act of 1891; 11 Halsbury's Statutes 1081, 1095.

(s) 10 Halsbury's Statutes 648.

(t) *Ibid.*, 740.

(u) 27 Halsbury's Statutes 421.

MANORIAL DOCUMENTS

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See also titles :

CUSTOS ROTULORUM ;
LIBRARIES ;
LIBRARY COMMITTEE ;

MUSEUMS ;
PARISH DOCUMENTS ;
RECORDS AND DOCUMENTS.

Introductory.—By Parts V. and VI. of the Law of Property Act, 1922 (a), copyholds were enfranchised as from January 1, 1926. A period of ten years after the commencement of the Act was allowed for the ascertainment of compensation for the extinguishment of manorial incidents. This period expired on January 1, 1936 (b). There has been, therefore, since the beginning of 1926 a decreasing

(a) Amended by the Law of Property (Amendment) Act, 1924, and printed as amended at 3 Halsbury's Statutes 633 *et seq.*

(b) See s. 1 of the Law of Property Act (Postponement) Act, 1924; 3 Halsbury's Statutes 674. A power to extend the ten year period is given to the M. of A. & F. by proviso (ii.) to s. 138 (1) of the Act of 1922 in the case of large manors, and by s. 130 of the same Act there is allowed a further period of five years during which compensation can still be assessed.

private pecuniary interest in the preservation of these often invaluable documents. In fact no inducement but public spirit often remains to the holder to preserve them at all, and this state of affairs will become universal in course of time. There is, therefore, great danger that many of them may be lost or destroyed through want of proper care. [754]

These documents, as providing material not only for local genealogy and topography but also for the social and economic history of the country as a whole, are of interest and importance.

Local authorities, who are naturally interested in the preservation of these documents, are in a favourable position to take action with this object. Before the above-mentioned operation of the Law of Property Act, 1922, manorial documents were normally in the care of the lord of the manor or his steward. It was clear at the time the Act of 1922 was passed that some provision must be made for their preservation. [755]

Disposal of Manorial Documents.—The provision for the care and custody of manorial documents is made in sect. 144A of the Law of Property Act, 1922 (c), and in the Manorial Documents Rules, 1926 (d).

For the purpose of the above-mentioned section and rules "manorial documents" are defined in sect. 144A (6) as meaning court rolls, surveys, maps, terriers, documents and books of every description relating to the boundaries, franchises, wastes, customs or courts of a manor, but as exclusive of the deeds and other instruments required for evidencing the title to a manor (e). "Manor" includes a lordship and a reputed lordship, and therefore the rules apply not only to the documents of manors in existence on January 1, 1926, but also to the documents of manors which were obsolete on that date. "Lord of the manor" includes any person entitled to manorial documents, and therefore includes a purchaser of such documents. [756]

Sect. 144A of the Act declares that all manorial documents shall be under the charge and superintendence of the Master of the Rolls, who may under sub-sect. (3) from time to time make inquiries for the purpose of ascertaining that any manorial documents are in proper custody and are properly preserved; an obligation is laid on the lord of the manor (f) or on any body to whom the documents have been transferred (*vide infra*) to furnish the Master of the Rolls with all such information as he may require.

By sub-sect. (4) the Master of the Rolls may direct the transfer of manorial documents to the Public Record Office, or to any public library, or museum, or historical or antiquarian society, willing to receive them. A transfer may be directed either because the Master of the Rolls is of opinion that the documents are not being properly preserved, or on the request of the lord of the manor. [757]

Powers of Local Authorities to Accept Documents.—A local authority who have established a library or museum (g) are in a position to deal

(c) S. 144A was inserted in the Act of 1922 by the Law of Property (Amendment) Act, 1924, s. 2 and Second Schedule. Both s. 144 and s. 144A are printed at 3 Halsbury's Statutes 655.

(d) S.R. & O., 1925, No. 1310. Made by the Master of the Rolls under the power given him by s. 144A (7).

(e) The latter documents are required by the lord of the manor in connection with waste or demesne land, minerals, etc., held by him.

(f) See definition, *supra*.

(g) See titles LIBRARIES; MUSEUMS.

with manorial documents (*h*), provided that the accommodation available is such as to satisfy the Master of the Rolls that the documents will be properly preserved (*i*).

The first object is that the documents should at all events be preserved. Mere preservation, however, is not sufficient to secure the whole benefit of such action by local authorities. It is important that the documents should not be dispersed in many depositories but should be collected at some convenient centre where they can be compared and inspected. It is unlikely that the area of any one local authority would produce sufficient documents to warrant a separate depository being maintained. The only way to secure at once the advantages of individual action by local authorities in collection of documents, which is of the utmost importance, and a system of maintaining a general depository, would seem to be joint action by more than one local authority. One method of joint action which may be convenient is to constitute a joint committee under sect. 91 of the L.G.A., 1933 (*j*), representative of all local authorities in an area. The most convenient area is generally the county. An alternative method is for the county council to take upon itself the whole duty. A number of county councils have already established County Record Rooms which have been approved by the Master of the Rolls for the purpose.

Whatever form of organisation is adopted it is advisable to make provision for the use of the services of any voluntary societies interested in the collection and study of records or in any form of local historical research. They are able to mobilise much individual effort which might otherwise be left without direction and are also able to give useful advice as to the direction of the activities of the local authority. Representatives of voluntary bodies could be appointed to membership of a committee of a local authority under sect. 85 of the L.G.A., 1933 (*k*).

[758]

For purposes of historical research it is desirable that collections of manorial documents should be available for comparison with other local records normally in the custody of the clerk of the peace or the clerk of the county council. Any form of records committee should maintain close co-operation with the *Custos Rotulorum* (*l*), Quarter Sessions and the clerk of the peace. In many counties voluntary societies exist who have undertaken work in connection with the collection and study of local records. The resources of these societies, who exist for the furtherance of the very object for which a local authority collect records, should be exploited to the full by any authority undertaking this work. They can give great assistance in tracking documents, in indexing and calendaring them and in repairing and arranging the papers in a suitable form for deposit. Naturally any

(*h*) It is suggested that it is unlikely that reasonable and relatively small expenditure for the purposes by an authority not possessing a library or museum would be challenged seriously; in any case, if their accounts are subject to audit by the district auditor, inquiry might be made as to the views of the M. of H. before expense is incurred.

(*i*) S. 144A (3).

(*j*) 26 Halsbury's Statutes 355. The power to appoint a joint committee given by s. 4 of the Public Libraries (Amendment) Act, 1893; 18 Halsbury's Statutes 861, only applies to urban authorities and as, therefore, it gives no power to combine to county, rural district or parish councils the limitation contained in s. 91 (4) of the L.G.A., 1933, would not apply where such councils desired to combine with urban authorities, and action could be taken under s. 91.

(*k*) 26 Halsbury's Statutes 352.

(*l*) See title *CUSTOS ROTULORUM*.

local authority, before taking steps to acquire manorial documents, should ascertain what arrangements exist in the county for the collection and preservation of such documents, and inquire if the Master of the Rolls considers those arrangements to be adequate to requirements. [759]

The conditions upon which manorial documents are accepted will be (apart from the provisions of the Act and Rules) a matter for arrangement between the local authority and the depositors, *i.e.* some depositors present their documents to the authority, while others reserve to themselves, or to their successors in title, the right to resume possession (*m*). [760]

Duties after Acceptance of Documents. *Inventory and Report.*—It is the duty of the governing body of a depository on transfer to them of manorial documents, to prepare an inventory of them (*n*). A copy of this inventory together with a report on the condition of the documents is to be forwarded to the Deputy Keeper of the Public Records (*o*). [761]

Custody.—The governing body of a depository are, after transfer, responsible for the preservation of the documents (*p*). They are to keep the documents in suitable receptacles, complying with any directions of the Master of the Rolls in this respect (*q*), and are to cause an index to them to be prepared (*r*). They are not, without the consent of the Master of the Rolls, to allow the documents to go out of their custody (*s*). The documents could be produced in court by an officer without passing out of the custody of the governing body. In view of the obligations attaching to the custody of manorial documents it is desirable that they should be stored in a separate room, or at least in a defined portion of a strong room or muniment room, and that facilities should be available for their examination under proper supervision. The staff of the Public Record Office are always willing to advise on questions relating to the storing and care of manorial documents. [762]

Access to Documents.—The general public may be allowed to inspect or take copies of manorial documents only with the leave of the Master of the Rolls or of the lord of the manor (*t*). Owners of manorial documents are generally very willing that their documents should be available for purposes of *bona fide* historical or similar research, but in view of Rule 11 a local authority accepting such documents for deposit should satisfy themselves, at the time of the deposit, that the

(*m*) For specimen forms for the deposit of documents, see G. H. Fowler, "The Care of County Muniments" (published by the County Councils Association at 54, Beceston Square, S.W.1), 2nd ed., 1928, Appendix II.

(*n*) The form of inventory is prescribed in the schedule to the rules. The Public Record Office will supply forms and advise as to the manner in which they are to be filled in.

(*o*) At the Public Record Office, Chancery Lane, London, W.C.2, to whom all correspondence with the office should be addressed (Rule 6). From these inventories and from other sources, a Register of Manors and Manorial Documents, arranged by counties, is in process of compilation at the Public Record Office and contains the names of some 20,000 manors. The information thus collected is at the disposal of accredited persons.

(*p*) S. 144A (4) (5). The latter sub-section provides (*inter alia*) that nothing in s. 144A is to prejudice or affect anyone's right to have the documents kept in a proper state of preservation.

(*q*) Rule 7.

(*r*) Rule 8.

(*s*) S. 144A (4).

(*t*) Rule 11.

owner is in fact willing to allow students to have access to the documents and publish the results of their researches. Certain classes of people have, however, rights as to production of the documents, delivery of copies, and inspection of certain documents. (1) In general no one who has a right to the production of manorial documents is to be prejudiced by the provisions of sect. 144A (u). The lord of the manor remains entitled to require the documents to be produced to him, or in accordance with his directions, free of cost (a). The Master of the Rolls also has the right to require the production of the documents in accordance with his directions (b). (2) Similarly no one who has a right to the delivery of copies of documents is to be prejudiced by the provisions of sect. 144A (u). (3) Any person interested in land enfranchised by the Law of Property Act, 1922, the Copyhold Act, 1841 (c), or the Copyhold Act, 1894 (d), may during reasonable hours inspect court rolls, on payment of the fees authorised by those Acts (e). As to fees, see *infra*. It would seem that a person interested in land enfranchised by a common law enfranchisement must obtain the consent of the Master of the Rolls or the lord of the manor (f). Under sect. 62 of the Copyhold Act, 1894 (g), any person interested in land enfranchised under that Act might not only inspect but obtain copies of court rolls. Since sect. 144A (5) of the Act of 1922 provided that existing rights of this kind should not be prejudiced presumably the right still exists. Sect. 63 of the Act of 1894 provided that anyone interested in land included in any enfranchisement or commutation made by apportionment under the Copyhold Act, 1841 (e), might inspect and obtain copies of or extracts from any instrument relating to the enfranchisement or commutation. This right also presumably remains. No one is to be allowed to inspect or copy manorial documents except under the supervision of some responsible person (h). [768]

In connection with historical or similar research it is usually the practice to require the searcher to be introduced by a responsible person and to state the purpose for which access to the deposited documents is sought.

There is, then, a distinction to be drawn between business searches and searches made by students. Applications for searches of the former kind are normally dealt with (often in a separate room) by the legal section of the local authority.

For an example of regulations for searchers, so framed as to illustrate the difference between each kind of search, reference may be made to Appendix I. of the above-mentioned "Care of County Muniments" (see *ante*, note (m), p. 331).

A regulation is sometimes imposed that anyone purporting to make researches for historical reasons shall not make use of the knowledge so gained in any legal proceedings. It is conceived that such a regulation would be difficult to enforce. It may well be of value, however, to the responsible official in investigating and determining the good faith of an applicant. [764]

Fees for Legal Searches.—The lord of the manor or anyone acting under his direction, in exercising his rights, is expressly entitled to do so free of cost (*supra*, "Access to Documents"). No fee has as yet been

(u) Sub-s. (5).

(b) S. 144A (1) and r. 9.

(d) 3 Halsbury's Statutes 592.

(f) Rule 11.

(h) Rule 12.

(a) S. 144A (5) and r. 9.

(c) 4 & 5 Vict. c. 35 (repealed).

(e) Rule 10.

(g) 3 Halsbury's Statutes 617.

prescribed by the Lord Chancellor under sect. 144 of the Act of 1922. It is suggested that until such a fee is prescribed, a reasonable fee may be charged. By sect. 62 of the Copyhold Act, 1894 (i), any person interested in land enfranchised under that Act might inspect and obtain copies of court rolls on payment of a reasonable sum. The M. of A. & F. had power, by the same section, to fix a scale of fees payable to the custodian (k). Under sect. 63 of the Copyhold Act, 1894 (l), any person requiring under that section inspection of or a copy or extract from any instrument must pay to the person having custody of it 2s. 6d. for every inspection and for every copy or extract a fee at the rate of twopence for every seventy-two words. Fees are not as a rule charged for searches undertaken for the purpose of historical research. A stipulation is, however, generally made that a copy of a work produced as a result of the research shall be presented to the depository. [765]

(i) 3 Halsbury's Statutes 617.

(k) This power has not been exercised.

(l) 3 Halsbury's Statutes 617.

MARGARINE

See BUTTER, MARGARINE, AND CHEESE.

MARGARINE-CHEESE

See BUTTER, MARGARINE, AND CHEESE.

MARINE STORE DEALER

REGISTRATION OF MARINE STORE DEALERS				PAGE	DEFINITIONS				PAGE
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Registration of Marine Store Dealers.—Where sect. 86 of the P.H.A. Amendment Act, 1907 (a), has been put in force by an order of the Home Secretary (b) in a borough or urban or rural district or contributory place, every person carrying on business as a dealer in old metal or as a marine store dealer, must register his name and place

(a) 13 Halsbury's Statutes 943.

(b) Act of 1907, s. 3 (1) (4).

of abode and every place of business, warehouse, store and place of deposit occupied or used by him (c) for the purpose of such business in a book kept for the purpose at the offices of the council, and must also enter in a book to be kept by him the description and price of all articles purchased or otherwise acquired by him, and the name, address and occupation of the person from whom they were purchased or acquired (d). Default in carrying out either of these requirements renders the offender liable to a penalty not exceeding £5 and to a daily penalty not exceeding 40s. (sect. 86 (3)). [766]

Inspection.—Every officer of the council, or other person authorised in writing by the council, is given free access at all reasonable times to every such place for the purpose of inspecting it and the books required to be kept. Obstruction of any officer or authorised person in the execution of his duty renders the offender liable to a penalty not exceeding £5 (sect. 86 (4)).

Where the council are the police authority, inspections are usually carried out by police officers, who should be provided with a written authority signed by the town clerk, and particularly if they are plain clothes officers. This inspection is usually a regular routine inspection, taking place about once a month, but in cases of suspicion or where stolen property is being traced, special visits are made. A quarterly or half-yearly return of these inspections is in many cases made for record purposes.

The officer carrying out the inspection examines the books to see if they are properly kept and particularly the purchases section of the register, looking for anything unusual in the class or quantity of the material or articles purchased, and the names and occupations of the vendors; and keeping in mind sect. 18 of the Prevention of Crimes Act, 1871 (e). The stock and premises are also examined. It is found to be an advantage for the inspecting officer to place after the last entry in the books at the time of his inspection his initials and the date and time of his visit.

Any breach of sect. 86 or other irregularity is reported to the chief officer of police, who administers a caution or prosecutes as circumstances warrant. If during the course of the inspection, a nuisance abatable under the P.H. Acts, is revealed this should be reported to the health department of the council for appropriate action.

In a borough where the council are not the police authority, the officers of the police authority usually also undertake inspections, but in either case officers of the health department of the council usually carry out a concurrent regular inspection of premises, with a view to the detection of nuisances under the P.H. Acts. [767]

Notices.—Upon sect. 86 being put in force, the council are required to give public notice of the provisions of the section, by advertisement

(c) As to what constitutes "user of premises" the Irish case of *Hall v. O'Brien* (1906), 40 Ir. L. T. 83, may be referred to.

(d) In an Irish case, *Toppin v. Marcus*, [1908] 2 Ir. R. 423; 14 Digest 37, note (g), *mens rea* was held not necessary to constitute an offence under the General Dealers (Ireland) Act, 1903, which requires a licensed general dealer to enter the true name and place of abode of the person from whom he purchased an article.

(e) 4 Halsbury's Statutes 676. This section prohibits the purchase by dealers in old metals of quantities of the metals mentioned in the Schedule to the Act of less weight than those specified in the schedule.

in two local newspapers and by handbills and otherwise as they think fit (f). [768]

Definitions.—The Act of 1907 contains no definition of "dealer in old metal" or "marine store dealer." For the purposes of the Old Metal Dealers Act, 1861 (g), the expression "dealer in old metals" means "any person dealing in, buying and selling old metal, scrap metal, broken metal, or partly manufactured metal goods, or defaced or old metal goods, and whether such person deals in such articles only, or together with second-hand goods or marine stores," and the expression "old metals" means "the said articles." An identical definition is contained in sect. 13 of the Prevention of Crimes Act, 1871 (h). These definitions are applied by the Public Stores Act, 1875 (i), for the purposes of that Act. For the purposes of the Merchant Shipping Act, 1894 (k), a marine store dealer is described as "every person dealing in, buying or selling any of the articles following, that is to say, anchors, cables, sails, old junk or old iron, or other marine stores of any kind." Persons dealing in the articles above enumerated would no doubt be held to come within the provisions of sect. 80 of the Act of 1907, but as the definitions are not incorporated they should not be regarded as exhaustive. [769]

Merchant Shipping Act, 1894.—Marine store dealers, within the definition already set out, are also regulated by sects. 538 to 542 of this Act (l), which operate throughout England and Wales. These sections require the name and trade to be painted on every warehouse and place of deposit, and that books be kept with records of transactions, and they prohibit the purchase of marine stores from anyone under sixteen years of age, and the cutting up of cables without a permit from a justice or the receiver of the district. [770]

Local Acts.—Sect. 86 of the Act of 1907 was founded on a clause commonly contained in local Acts applying to boroughs (m), and some boroughs have preferred to rely on their local Act instead of obtaining the powers of sect. 86. By sect. 865 of the Middlesbrough Corporation Act, 1883 (n), the corporation were permitted to license persons to carry on the business of furniture brokers, marine store dealers, ticket porters and shoe-blacks. [771]

London.—Sect. 86 of the P.H.As. Amendment Act, 1907, does not extend to London, and no similar provision has been enacted for London. But marine store dealers in London are subject to sects. 538 to 542 of the Merchant Shipping Act, 1894, and to sect. 13 of the Prevention of Crimes Act, 1871 (o). [772]

(f) Act of 1907, s. 86 (5). As to the effect of not giving such notice, see *Duncan v. Knill* (1907), 96 L. T. 911; 2 Digest 283, 560, where it was held that the giving of the notice of orders required by s. 4 (1) of the Wild Birds Protection Act, 1894; 1 Halsbury's Statutes 361, was not a "condition precedent." Similarly a neglect by the council to give this notice might not excuse a marine store dealer for a breach of the present section.

(g) S. 3; 4 Halsbury's Statutes 624.

(h) *Ibid.*, 676.

(i) S. 9; *ibid.*, 684.

(k) S. 538; 18 Halsbury's Statutes 367.

(l) 18 Halsbury's Statutes 267, 368.

(m) See e.g. s. 242 of the Rawtenstall Corp'n. Act, 1907 (7 Edw. 7, c. lxxvii.), and s. 127 of the Wallasey Tramways and Improvement Act, 1906 (6 Edw. 7, c. cxi.).

(n) 23 & 24 Geo. 5, c. lxxxiii.

(o) See *ante*, p. 334, note (c).

MARKET GARDENS

See DERATING.

MARKET INSPECTOR

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See also titles :

DISEASES OF ANIMALS ;	MARKETS AND FAIRS ;
INSPECTORS OF WEIGHTS AND MEASURES ;	OFFICERS OF LOCAL AUTHORITIES ;
	TOLLS AND STALLAGES.

Title and Appointment.—Although the chief officer at many public markets, particularly in small towns, is styled “the market inspector,” there does not appear to be any statutory authority for the title. Local authorities who have established a market under sect. 166 of the P.H.A., 1875 (a), are empowered by sects. 106, 107 of L.G.A., 1933 (b), to appoint such officers as may be necessary. The Markets and Fairs Clauses Act, 1847, refers in sect. 15 (c) to the appointment of an “inspector of provisions” and in the following section to any persons appointed to superintend the market; also in sect. 21 (d) to the appointment of “persons to attend to the weighing or measuring” of commodities sold in the market. Sect. 33 (e) refers to the collection of stallages, rents or tolls by the “collector or other person authorised.” All these sections are incorporated with the P.H.A., 1875, by sect. 167 of that Act (f), and with the Diseases of Animals Act, 1894, by sect. 32 (2) of that Act (g). Under certain local Acts, authorising the establishment or regulation of markets, it is not unusual for the local authority concerned to be authorised to appoint such superintendent, inspector, collector, clerk, etc., as they shall think fit. There is, therefore, a variety of titles for the chief administrative officer; e.g. superintendent or general superintendent, manager or general manager, clerk of the markets (this title is referred to in the Sixth Schedule to the Weights and Measures Act, 1878 (h)), inspector, etc. The title of the officer usually indicates the importance of the undertaking and the responsibilities of the office. For instance, “general manager” conveys the impression of a supervising and controlling official at more than one market or other centre.

The market officer is either recruited from the existing officers of the council or applications for the post are invited by public advertisement.

- (a) 18 Halsbury's Statutes 694.
- (b) 11 Halsbury's Statutes 458.
- (c) *Ibid.*, 463.
- (g) 1 Halsbury's Statutes 406.

- (b) 26 Halsbury's Statutes 361, 362.
- (d) *Ibid.*, 430.
- (f) 13 Halsbury's Statutes 695.
- (h) 20 Halsbury's Statutes 394.

Some councils have found it convenient to combine the duties of the chief market officer with those of some other section of public administration; e.g. the market superintendent is, in places, also the chief inspector of weights and measures; in other towns he is the inspector of the council under the Diseases of Animals Acts. [773]

Qualifications.—The person appointed must have a good general knowledge of market law and administration, and of any other statutory provisions relating to the markets or other undertakings under his charge. He should know what fees are authorised to be taken for rents, tolls or stallages. Where properties in addition to markets are under his management (as frequently happens in the larger centres) a knowledge of the law relating to landlord and tenant is desirable. If the markets of the council include a livestock market the chief officer should be fully acquainted with the Diseases of Animals Acts and the Orders of the M. of A. & F., relating to the control of markets, the movement of animals, the disinfection of vehicles, etc., and the procedure to be adopted in the event of an outbreak of disease. If his duties include the management of public slaughter-houses, he has further responsibilities imposed on him in connection with the control of such premises. [774]

Duties.—The responsibilities devolving upon the chief officer naturally vary as they are governed by the nature and ramifications of the market undertaking. A council may only maintain an open market ground where retail sales are transacted on not more than one or two days per week, but other councils will maintain a market hall which is open daily. In many instances the market is a livestock centre only. As compared with these markets, the total income from which may be only a few pounds per week, there are the huge distributive markets in some of the larger cities, which comprise extensive wholesale and retail depots for the sale of fruit, vegetables and flowers; livestock, meat, fish, game, rabbits and poultry; with, in a number of instances, additional services such as public abattoirs, cold storage accommodation, etc., with a total turnover approaching £250,000 per annum, necessitating the employment of a large staff of assistants and the collection of considerable sums of money. Here the duties of the chief market officer are not comparable with those of officers of the less important undertakings.

It is the duty of the chief officer, either personally or through his assistants, to allocate space in the market to the daily or casual user, and to assess and charge the amount of toll or stallage payable in respect of the commodities or accommodation. For space which is occupied on a more permanent basis, in respect of which rent is payable, it is usually his duty to inquire into the applications received for a tenancy and to submit a report thereon to his committee. In many markets these tenancies are created by an agreement containing specific conditions.

Market charges are usually payable on demand and the chief market officer is generally responsible for the issue of the necessary receipts (which should be in duplicate), and for the compilation of summaries under appropriate headings. Statistical information in regard to the use of the market, and the volume of business transacted, is of great value as indicating the growth or decline of transactions, and for this reason it is desirable that the officer should have before him each week a statement showing in detail particulars of income, the con-

modities exposed for sale, the area of space occupied, the number of traders, etc., with a comparison for the preceding week, and for the corresponding week of the preceding year. Where the information can be shewn on a unit basis it is an added advantage. The requisite summaries should be reported to the committee periodically with the comments of the officer on any noteworthy variation.

All monies received by the market officer should, without delay, be banked or paid in at the treasurer's office with a classified summary of the receipts, the books being subject to a regular audit. [775]

The chief market officer is also expected to supervise strictly the expenditure incurred in the management of the undertaking and to ensure that all services are performed efficiently and economically. It is usual, prior to the commencement of the financial year, for him to prepare for the consideration of his committee, detailed statements of the estimated receipts and payments for each section of the department during the ensuing year. The actual totals accruing throughout the year should be kept under close observation, and it is helpful in this connection to prepare a series of progressive financial charts indicating in distinctive colours: (1) the anticipated receipts (or payments), (2) the actual receipts (or payments) for the preceding year, and (3) the actual receipts (or payments) as they accrue each week for the year under review. By this means the chief officer is able to see at a glance whether there is any undue variation between the actual and anticipated progressive totals, and also between the actual totals for the year and those for the corresponding period for the previous year. Charts such as these, in combination with the comparative statements already referred to, give a clear indication of the progress of the various sections of the department and assist the management materially in the supervision of the finances.

The market officer is usually held responsible for securing the observance of the bye-laws (i). Frequently the enforcement of other rules or regulations is referred to the market officer, such as the Public Health (Meat) Regulations, 1924, and the Public Health (Imported Food) Regulations, 1925, so far as the regulations relate to the selling of meat from stalls (k), the Orders in Council made under sect. 2 of the Merchandise Marks Act, 1926 (l), regarding an indication of the source of origin of certain classes of imported food, and the orders made under the Agricultural Produce (Grading and Marking) Acts, 1928 and 1931 (m). Under sect. 4 of the Sea Fishing Industry Act, 1933 (n), the market officer is empowered, within the limits of the market, to seize fish below the minimum size, which is offered for sale in contravention of that section. [776]

Additional Responsibilities.—It is not too much to suggest that the successful operation of a market depends in a great measure on the manner in which the chief market officer carries out his duties. It has already been shewn that such an officer, whether the market be large or small, is usually responsible to the appropriate committee of the council for the general administrative control of their markets. Quite apart from his ordinary duties, it should be his aim to enhance

(i) See title **MARKETS AND FAIRS**, *post*, p. 361.

(k) See titles **IMPORTED FOOD AND MEAT**.

(l) 19 Halsbury's Statutes 898. See title **IMPORTED FOOD**.

(m) See title **MARKING OF AGRICULTURAL AND HORTICULTURAL PRODUCE**.

(n) 26 Halsbury's Statutes 151.

the reputation of the markets under his charge and to ensure, as far as possible, that stalls are occupied by stable and reliable traders. Where the market is for wholesale produce, he should do all in his power to encourage the progressive stallholder and provide such facilities as will attract ample supplies of the commodities dealt with in the market, and permit of their display and distribution in a satisfactory manner. It is of primary importance that he should ensure that all foodstuffs sold are wholesome and are exposed for sale in an attractive manner, and that in every possible way he should increase the usefulness of the market. Any feature which would enlarge the volume of trade should be carefully considered. A uniform type of structure or sign and lamp is an advantage and is generally encouraged. In one large centre, the chief officer claims that the business of the retail markets under his control has been materially increased through the compilation and publication of a weekly report informing the Press of the prices obtaining in the market for various foodstuffs.

It is in the interests of the council that the chief market officer should make a close study of marketing methods in all their branches; of the views expressed in the numerous publications issued by the M. of A. & F. on the various aspects of marketing; of the conclusions arrived at and the recommendations made by the several Reorganisation Commissions appointed under the Agricultural Marketing Acts, 1931 and 1933 (o). He should be in a position to envisage the possible outcome of such recommendations and of any scheme which may be made by producers under the Acts for the marketing of any specific product. Any alteration in the methods of marketing may reflect itself in the local markets, and some reorganisation or rearrangement may be necessary. The chief officer should be in a position to advise his committee on such matters as may affect the markets under his immediate control. Finally, in the preparation of plans and estimates for the carrying out of any scheme in connection with the improvement of the facilities at a market, the transfer of a market from one site to another, or the establishment of a new market, he should be able and anxious to co-operate to the fullest extent with those responsible for the actual execution of the work. [777]

(o) 24 Halsbury's Statutes 11; 26 Halsbury's Statutes 7.

MARKETS AND FAIRS

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STREET TRADING ;
TOLLS AND STALLAGES.

INTRODUCTION

Markets and fairs may, for practical purposes, be divided, in accordance with their origin or basis, into four main classes : (1) Franchise markets and franchise fairs, held under charters or letters patent from the Crown, or by prescription ; (2) Markets and fairs established or held under local Acts ; (3) Markets established under the P.H.A., 1875 ; and (4) Markets provided under the Diseases of Animals Act, 1894. A market for a particular product may also be established by a scheme approved by the M. of A. & F. ; see sect. 6 (2) of the Agricultural Marketing Act, 1931 (a).

A market or fair belonging to either of the first two classes is often in the hands of a local authority : and a local authority alone can have the administration of a market of the third or fourth class. [778]

Franchise Markets and Fairs.—The Crown has always had, by the common law, a prerogative of authorising the establishment of markets

(a) 24 Halsbury's Statutes 19.

and fairs. This right, though now seldom exercised, in former times was exercised freely, and by charters or letters patent from the Crown the privilege of holding markets and fairs was frequently granted to an individual person and his heirs or to a body corporate and their successors. The individual was often the lord of a manor, the body corporate was generally the corporation of a city or borough, and the area to which the grant limited the privilege was usually the manor or the city or borough. The privilege of holding a market or fair thus conferred by the Crown upon a subject is in law a franchise, a species of property which is in the nature of an incorporeal hereditament (b). If the grant gives also the liberty of taking tolls, that liberty is a separate franchise (c).

Instances may be found of valid franchises, which were created by a grant, not from the Crown itself, but in a county palatine by the Duchy of Lancaster or the Bishop of Durham.

Whether a franchise is for a market (*mercatus*) or for a fair (*seria*) depends upon the wording of the grant. These two franchises probably had different origins, but at a very remote time their legal incidents became well-nigh identical. "Every fair is a market, but every market is not a fair" (d). A market is generally holdable by the terms of the grant more frequently than a fair; and the derivation of "fair" from the Latin word for "holiday" suggests that amusements have from a remote period been associated with fairs. These amusements have sometimes swamped the business of buying and selling, but as the owner of the franchise does not seem to be under any obligation either to provide them or to give facilities for their provision, it may be doubted whether they are strictly legal incidents. A municipal corporation owned certain fairs, and by a local Act the holding of a fair without the corporation's licence was forbidden. The occupier of a field allowed persons to set up on it on fair days swings, roundabouts, and other contrivances. He made no charge, and there was no buying or selling of goods in the field. BRUCE, J., was of opinion that this was not a fair, but LAWRENCE, J., held that it was, at any rate within the meaning of the local Act (e). The two franchises are of equal dignity, and where the day for holding a market coincides with the day for holding a fair within the same district, the market does not become merged in the fair (f). [779]

In granting a market or fair, the Crown has always been subject to the rule that it cannot by a later grant derogate from or diminish the force of an earlier one. A grant of a new market which interferes with the privileges of an existing market is invalid, and is liable to be repealed by process of *scire facias* (g); and the owner of the existing market is entitled to have his rights protected from infringement by the later grantee, although the later grant has not been repealed (h). Hence it has been usual for the Crown, before granting a new market, to hold an inquiry under a writ of *ad quod damnum*, for the purpose of ascertaining whether the proposed market would damage existing markets, and in making the grant, to insert provision that the new market should not be held so as to do any such damage.

(b) 2 Black. Comm. 37, 38.

(c) See post, p. 343.

(d) 2 Inst. 406.

(e) Cooper v. Collins (1893), 57 J. P. 248; 33 Digest 523, 11.

(f) Newcastle (Duke) v. Workson U.D.C., [1902] 2 Ch. 145; 43 Digest 540, 176.

(g) Re Islington Market Bill (1835), 3 Cl. & F. 513; 33 Digest 552-3, 352.

(h) 2 Inst. 406. See post, p. 342.

The grantee or subsequent owner of a franchise, market or fair is liable to have the grant repealed by *scire facias*, not only where it has been obtained improperly or to the prejudice of the rights of other persons, but also where the franchise is abused, as by neglect to provide a proper market-place (*i*), or by holding the market on the wrong days (*k*), or where the market is not held at all (*l*). But non-user of a franchise does not of itself extinguish it (*m*). If a person usurps a franchise without lawful authority, the Attorney-General may proceed against him by an information in the nature of a *quo warranto*. [780]

Prescription.—Persons and bodies corporate who are holding markets or fairs or taking tolls as of right, but cannot produce any actual grant from the Crown, may yet be able to base their title upon prescription (*n*) or upon the theory of a lost grant. A prescriptive franchise is one which has been regularly enjoyed from time immemorial, that is, from before the beginning of the reign of Richard I. (*o*), and an uninterrupted modern user raises a presumption in favour of prescription (*p*). Such a presumption, however, is liable to be rebutted by evidence that the user does not in fact go back to time immemorial, and evidence to that effect, if accepted, necessarily defeats a claim to prescription. But still, if all the facts warrant it, long user may justify the inference that a grant, which has since been lost, was made *within* legal memory (*q*).

Not only may the right to hold a market be inferred from long user; but where a market has long been held within a manor by the lord of the manor as such, or within a borough by the borough corporation as such, it may be also inferred that the right is to hold the market anywhere within the manor or the borough, and not merely to hold it in the place or places in which it has actually been held (*r*). [781]

Statutory Markets and Fairs.—Between a market or fair which is created by an Act of Parliament and one which has its origin in a grant from the Crown there are important differences. Thus the validity of franchises which the Crown has purported to confer can be disputed; but not so the validity of statutory rights conferred by Parliament. In authorising fresh markets, the Crown must respect existing rights, while Parliament can deal with them as it pleases. Charter markets are liable to forfeiture for misuse by process of *scire facias* taken by or on behalf of the Crown (*s*); but this process cannot be invoked against statutory markets (*t*). As regards both rights and

(i) See *post*, p. 352.

(k) See *post*, p. 355.

(l) 2 Inst. 222.

(m) *Middleton (Lord) v. Power* (1886), 19 L. R. Ir. 1; *Newcastle (Duke) v. Workson U.D.C.*, [1902] 2 Ch. 145, at p. 154; 33 Digest 540, 176.

(n) Co. Litt. 114b.

(o) Co. Litt. 115a.

(p) *Penryn Corpn. v. Best* (1878), 3 Ex. D. 292; 33 Digest 551, 330; *Jenkins v. Harrey* (1835), 2 Cr. M. & R. 393; 13 Digest 296, 280; *R. v. Jolliffe* (1823), 2 B. & C. 54; 17 Digest 11, 72.

(q) *Hull Corpn. v. Horner* (1774), 1 Cowp. 102. For cases in which this inference was not drawn, see *A.-G. v. Horner* (1884), 14 Q. B. D. 245; 33 Digest 527, 45, and *Benjamin v. Andrews* (1858), 27 L. J. (M. C.) 310; 33 Digest 523, 7, where it was held that the Prescription Act, 1832, does not apply to franchises.

(r) *R. v. Cotterill* (1817), 1 B. & Ald. 67; 33 Digest 534, 111; *De Ruten v. Lloyd* (1896), 5 A. & E. 456; 33 Digest 531, 90; *Stepney Corpn. v. Gingell, Son & Foskett*, [1909] A. C. 245; 33 Digest 533, 104.

(s) *Great Eastern Rail. Co. v. Goldsmid* (1884), 9 App. Cas. 927 at p. 965; 33 Digest 524, 18.

(t) *New Windsor Corpn. v. Taylor*, [1899] A. C. 41 at p. 50; 26 Digest 352, 753.

remedies, provisions can be introduced into statutes, which would be void if inserted in charters; the Crown must follow the law, but Parliament can alter it. A statutory market is not, strictly speaking, a franchise (*u*).

Where a local Act has been obtained for the regulation of a market or fair which formerly existed by charter or prescription, the question whether the old franchise remains or has been extinguished and replaced by purely statutory rights can be determined only by considering the terms of the local Act (*a*).

Since the passing of the Markets and Fairs Clauses Act, 1847, local Acts for regulating a market or fair have often incorporated some or all of its provisions (*b*). [782]

Conveyance or Lease of Market Rights.—A conveyance or a lease of a franchise market or fair, or of franchise tolls, must be made under seal. For an incorporeal hereditament can pass only by deed, and a parol lease, for however short a term, cannot operate as a demise, but only as a licence (*c*). When a market is to be conveyed or leased, it must be borne in mind that the franchise and the market-place are distinct properties (*d*), and that a conveyance of the one is insufficient to pass the other. It must also be borne in mind that, as a market is an incorporeal hereditament, rent cannot issue out of it, so as to be recoverable by distress (*e*), and that this inability to distrain for rent in arrear may perhaps apply where a market and market-place are leased together at one entire rent (*f*). It is advisable, in framing a lease, to reserve separate rents, one for the market and the other for the market-place, and, as only the latter can be distrained for, to make that the substantial sum (*g*).

Where market rights are vested by statute in a public body, not for their own benefit, but for the benefit of the public, that body cannot convey or demise the rights, unless such a power has been conferred by statute (*h*). A council appear to have no power to transfer or lease to a private individual their statutory market rights under the P.H.A., 1875; and they cannot covenant not to exercise the rights (*i*). Land which is held for an express statutory purpose is excluded from the definition of "corporate land" in sect. 305 of the L.G.A., 1933 (*k*), and Part VII. of that Act does not authorise a sale, exchange or lease of land in breach of any trust binding upon the

(*u*) *New Windsor Corpn. v. Taylor*, *infra*, per Lord Watson, at p. 48.

(*a*) *New Windsor Corpn. v. Taylor*, [1890] A. C. 41 at p. 50; 20 Digest 852, 783. In *Manchester Corpn. v. Lyons* (1882), 22 Ch. D. 287; 33 Digest 551, 342, and *Birmingham Corpn. v. Foster* (1894), 70 L. T. 371; 33 Digest 552, 343, it was held that the market rights had become purely statutory; in *Stevens v. Chown*, [1901] 1 Ch. 894; 33 Digest 559, 415, that the old franchise tolls had not been abolished.

(*b*) See *post*, p. 348.

(*c*) Co. Litt. 9a, 49a, 109a; *Somerset (Duke) v. Fogwell* (1826), 5 B. & C. 875; see *Bridgland v. Shapter* (1839), 5 M. & W. 375; 33 Digest 530, 72.

(*d*) See per BRETT, M.R., in *A.-G. v. Horner*, p. 342, *ante*, note (*q*), at p. 254.

(*e*) Co. Litt. 47a; *Jezel's Case* (1588), 5 Co. Rep. 3a; 33 Digest 529—30, 70.

(*f*) See *Gardiner v. Williamson* (1881), 2 B. & Ad. 336; 18 Digest 209, 80.

(*g*) For forms of a conveyance and a lease, see 9 Ency. Forms 190—200.

(*h*) *Tepper v. Nichols* (1864), 34 L. J. (C. P.) 61; *Gardner v. London, Chatham and Dover Rail. Co.* (1867), L. R. 2 Ch. App. 201; 10 Digest 1181, 3375. See title CORPORATE LAND.

(*i*) *Spartling v. Bantoft*, [1891] 2 Q. B. 384; 33 Digest 526, 38. The point that there was no power to lease the market tolls was not raised in *Kidderminster Corpn. v. Hardwick* (1873), L. R. 9 Ex. 13; 33 Digest 74, 472.

(*k*) 26 Halsbury's Statutes 466.

council (l). Similarly it would seem that a borough council, unless authorised by a local Act, may not sell, mortgage or alienate any franchise of a market or tolls, owned by the borough. On the general subject, see title CORPORATE LAND.

On the other hand, by sect. 136 of the Municipal Corporations Act, 1882 (m), the trustees acting under any local Act for providing or maintaining a market in or for a borough, or any part of it, may transfer to the municipal corporation, with the consent of the council, all their powers, property and liabilities in the manner indicated in the section. [783]

ESTABLISHMENT OF MARKETS UNDER P.H.A., 1875

By sect. 166 of the P.H.A., 1875 (n), borough councils have power, with the consent of two-thirds of their number, and urban district councils have power with the consent of the owners and ratepayers of their district (expressed by resolution passed in manner provided by Sched. III. to the Act), to do any of the following things within their area: (1) to provide a market-place, and construct a market-house and other conveniences for the purpose of holding markets; (2) to provide houses and places for weighing carts; (3) to make convenient approaches to such market; (4) to provide all such matters and things as may be necessary for the convenient use of such market; (5) to purchase or take on lease land, and public or private rights in markets and tolls, for any of the foregoing purposes; and (6) to take stallages, rents and tolls in respect of the use by any person of such market.

But no market may be established by a council in pursuance of sect. 166 "so as to interfere with any rights, powers or privileges (o) enjoyed within" the council's area by any person, without his consent (p). [784]

Sect. 167 incorporates with the Act of 1875, "for the purpose of enabling" a borough council or U.D.C. "to establish or to regulate markets," certain provisions of the Markets and Fairs Clauses Act, 1847 (q), in so far as they relate to markets (r). Consequently, in reading them into the Act, provisions relating to fairs must be ignored. The Act does not authorise the establishment of fairs (s). Sect. 167 further provides that all tolls leviable in pursuance of the section shall be approved by the M. of H. (t), and also allows bye-laws to be made for regulating the market and other purposes (u).

An R.D.C. may, if the M. of H. consents, exercise with respect to the provision or regulation of markets any power which an U.D.C. may exercise with the consent of the owners and ratepayers under sect. 166, and sects. 167, 168 of the Act of 1875 apply with respect to the exercise of those powers by rural district councils as they apply to

(l) L.G.A., 1933, s. 179 (d); 26 Halsbury's Statutes 404.

(m) 10 Halsbury's Statutes 621.

(n) 13 Halsbury's Statutes 694.

(o) As to the meaning of these words, see *post*, p. 345.

(p) See *post*, p. 345. "Person" is defined in s. 4 to include any body of persons, whether corporate or unincorporate.

(q) 13 Halsbury's Statutes 695.

(r) For the sections incorporated, see *post*, p. 348.

(s) The construction of the incorporated sections is defined by s. 316. See *Sperling v. Bantoft*, *ante*, p. 343, note (4).

(t) See title TOLLS AND STALLAGES.

(u) See *post*, pp. 361-363.

an U.D.C. (a). The Minister's consent is thus substituted for the consent of the owners and ratepayers of a rural district. There seems to be nothing to prevent a consent relating to one or more contributory places only of a rural district. [785]

Resolution to Establish Markets.—Before any of the things permitted by sect. 166 may be done the requisite resolution, mentioned in that section, must be passed. It is advisable that the resolution should follow the terms of the section, and take power to do all the things mentioned in it, even though there be no present intention of doing all of them. A resolution of a borough council must be passed with the consent of two-thirds of the full number of the council, and the minutes should show that it was so passed. In the case of an U.D.C. the resolution must be passed in the manner provided by the rules in Sched. III. to the P.H.A., 1875 (b).

The extent to which the council will act upon the resolution will be a matter for the determination of the council from time to time. But the power to act under sect. 166 is an inalienable power, and a covenant by the council to take no action under sect. 166 would be void (c). [786]

Protection of Existing Market Rights.—By sect. 166, a council, before proceeding to establish a market under that section, must consider whether the consent of any persons who are already enjoying market rights, powers or privileges within the council's area, is necessary to the establishment of the market. Such a consent must be obtained if the establishment of the new market would be an infringement of the rights, etc., enjoyed. But a right, to be capable of infringement, must be a right in the nature of a franchise; persons who hold unauthorised markets cannot complain, under this clause, of "interference"; and their consent to the new market is unnecessary (d). The words "rights, powers or privileges," as used in the clause, mean rights acquired adversely to the rest of the world and peculiar to the individual, and do not extend to a right which an individual enjoys only in common with the rest of the public (e). A new market cannot therefore be established under the Act so as to "disturb" (f) an existing charter market except with the consent of the owner of the charter market.

A municipal corporation owned an ancient market which they had always held on the highway, and certain persons had a prescriptive right to erect stalls on market days on parts of the highway constituting the market-place. The corporation attempted to substitute a new market-place for the ancient one, and as against the stall-owners sought to justify the substitution either (1) at common law, as a good removal of the ancient market, or (2) under the similar provisions of sect. 50 of the L.G.A., 1858, as a valid establishment of a new market. But it was held that the substitution was unlawful either way, and that if viewed as an attempt to establish a new market under the Act, it was an interference with rights within the meaning of the section in question (g). [787]

(a) P.H.A., 1908, s. 1; 13 Halsbury's Statutes 948.

(b) 13 Halsbury's Statutes 771. For a form of resolution, see 9 Ency. Forms 189.

(c) *Spurling v. Bantoft*, ante, p. 343, note (i).

(d) *Spurling v. Bantoft*, ante, p. 343, note (i); *Fearon v. Mitchell* (1872), L. R. 7 Q. B. 690; 33 Digest 526, 39.

(e) *Woolwich Corpn. v. Gibson* (1905), 69 J. P. 361; 33 Digest 520—7, 39.

(f) As to what constitutes disturbance, see post, p. 356.

(g) *Ellis v. Bridgnorth Corpn.* (1861), 2 John. & H. 67; 33 Digest 526, 37; *Same v. Same* (1863), 15 C. B. (N. s.) 52; 33 Digest 535, 119.

Acquisition of Existing Market Rights.—If a person who enjoys market rights within the council's area merely consents to the establishment of a new market by the council, his own market rights will continue. He will remain entitled to exercise them, and the consent will only operate to prevent him from treating the new market as a wrongful interference with them. But the powers of a council under sect. 166 of the Act of 1875 include a power of purchasing "public or private rights in markets and tolls," and by sect. 168 (*h*) a council have a special power of purchasing the undertaking of any market company. By the exercise of these powers a council may be able to acquire all the market rights within their area, unless the rights are vested in some public body which is incapable in law of parting with them. But these powers cannot, it seems, be exercised compulsorily. Though under sect. 159 (2) of L.G.A., 1933 (*i*), the M. of H. can make a provisional order enabling a council to purchase land compulsorily for any purpose of the P.H.As., it is submitted that that section does not extend to the purchase either of franchises or of equivalent statutory rights, and that a council can acquire existing markets and tolls only by agreement with the owners or by a local Act. Sects. 166, 168 do not authorise the purchase of a fair. [788]

According to advice received from the Law Officers by the Local Government Board (*j*) a council, after purchasing a franchise market with franchise tolls, may levy these tolls without first obtaining, under sect. 167 of the Act of 1875 (*k*), the approval of the M. of H., the reason apparently being that such tolls are levied by virtue of the franchise, and not by virtue of powers conferred by the Act. But, according to the same advice, the council cannot alter such tolls, to an extent not justified by the franchise, unless the Minister's approval has been obtained. It follows that where a franchise market with franchise tolls has been purchased there are, as a rule, two courses open to the council: (1) they may exercise the franchise rights in strict accordance with the common law; or (2) they may take the benefit of sect. 167, and regulate the market with the tolls in accordance with that section and the incorporated sections of the Markets and Fairs Clauses Act of 1847. But if they adopt this second course, they cannot, it seems, continue to exercise the old franchise rights in a manner not consistent with those provisions (*l*); and it is perhaps questionable whether the old rights remain or become merged in the statutory rights adopted under sect. 167. Thus it is submitted that the council cannot put sect. 18 of the Act of 1847 (*m*) into force to protect old tolls which have not been approved by the M. of H. The tolls protected by that section are tolls "by the special Act authorised," and the Act of 1875, which is the special Act, only authorises tolls approved by the Minister.

The sanction of the M. of H. is not required for the purchase of market rights under sect. 166 or sect. 168 of the Act of 1875; but a council cannot borrow money for the purpose of making the purchase without the Minister's sanction. The policy of the Ministry, when invited by councils to sanction loans for market purposes, seems to be to induce the councils to regulate their markets under the powers

(*h*) See *post*, p. 347.

(*i*) 26 Halsbury's Statutes 392.

(*j*) R. C. on Market Rights and Tolls, 1888, First Report, Vol. II., p. 4.

(*k*) 13 Halsbury's Statutes 695.

(*l*) See *per* Wood, V.C. in *Ellis v. Bridgnorth Corpn.* (1861), 2 John. & H. 67, *ante*, p. 345, note (*g*).

(*m*) See *post*, p. 358.

given by sect. 167 of the Act, and not to rely on pure franchise rights, which are less easy to administer. [789]

Purchase from a Market Company of their Undertaking.—By sect. 168 of the P.H.A. (n) a council may purchase, and "the directors of any market company" may sell and transfer to the council, on such terms as may be agreed on, "all the rights, powers and privileges and all or any of the markets, premises and things which at the time of such purchase are the property of the company, but subject to all liabilities attached to the same at the time of such purchase" (o). It is conceived that a council cannot proceed under this section until they have adopted a resolution under sect. 166 of the Act sufficiently wide to cover the transaction with the company.

Apparently sect. 168 gives the directors of a market company a special power of sale which, apart from the section, they may not possess, and a sale, carried out in accordance with the section, will be valid, notwithstanding any limit on their ordinary power of sale, or the formalities necessary for their exercise. The question whether a particular company is a "market company" within sect. 168 must be determined by the nature of the undertaking, but the expression seems to include a market company established or controlled by a local or private Act. Before the purchase is made the extent of the liabilities that will remain attached to the undertaking should be examined, as these might possibly later hamper the council. [790]

Leases to Councils.—By sect. 166 of the Act of 1875 (p) a council can take on lease, not only land, but public or private rights in markets and tolls. As to taking land on lease, see also sect. 157 of L.G.A., 1933 (q). A lease, whether of land or of rights in markets or tolls, can be obtained by agreement only; it cannot be obtained compulsorily. When a lease of franchise rights has been obtained, the council must not under sect. 166 or sect. 167 take any step which would be inconsistent with the terms of the lease or injure the lessor's reversionary interest. For this reason leases seem to be much less advantageous than purchases.

Where the owner of a weekly market and of certain annual fairs leased the market to a council, but reserved the fairs, it was held that the council could hold the market on the proper days, though they happened also to be fair days (r). A lease of fairs cannot be taken by a council. A council would seem to have no power to grant a lease or sublease of a market or of the market tolls (s). [791]

PROVISION OF MARKETS UNDER DISEASES OF ANIMALS ACT, 1894

For the local authorities under this Act and their power to act by a committee, see pp. 395—397 of Vol. IV.

By sect. 32 (1) of the Act (t), "a local authority may provide, erect, and fit up wharves, stations, lairs, sheds and other places for the landing, reception, keeping, sale, slaughter or disposal of foreign or

(n) 13 Halsbury's Statutes 695.

(o) For forms of resolution and conveyance, see 9 Ency. Forms 190—192.

(p) 13 Halsbury's Statutes 694.

(q) 26 Halsbury's Statutes 391.

(r) *Newcastle (Duke) v. Workson U.D.C.*, [1902] 2 Ch. 145; 33 Digest 540, 176.

(s) See *ante*, p. 343.

(t) 1 Halsbury's Statutes 406.

other animals, carcases, fodder, litter, dung and other things." Sect. 32 (2) incorporates with the Act the Markets and Fairs Clauses Act, 1847, except sects. 6 to 9 and sects. 51 to 60; and sect. 32 (3) enacts that a wharf or other place provided by a local authority under the section shall be a market within the incorporated Act, that the Act of 1894 shall be the special Act, that the prescribed limits shall be the limits of lands acquired or appropriated for purposes of the section, and that bye-laws for the market shall be approved by the M. of A. & F. (u). Sub-sects. (4), (5) and (7) relate to charges or tolls for the use of any wharf or other place provided under the section (a).

By sect. 33 (1) of the Act (b) a local authority may purchase, or may by agreement take on lease or at a rent, land for wharves or other places, and by sub-sect. (3) the regulations in sect. 176 of the P.H.A., 1875 (c), must be observed. That section is now repealed by L.G.A., 1933, but its application brings into play sect. 160 of the Act of 1933 (d) and thus allows a provisional order for compulsory purchase to be made by the M. of H. (e). By sect. 33 (4) of the Act of 1894, the powers conferred by the section may be exercised by a local authority with respect to land within or without their area. [792]

MARKETS AND FAIRS CLAUSES ACT, 1847

This Act has no operation of itself; and operates only by virtue of its incorporation with a special Act. By sect. 1 (f) its clauses apply to the undertaking authorised by the special Act (1) subject to any express variation or exception in such Act, and (2) only so far as the clauses are applicable to the undertaking. Thus, if the undertaking be a market, provisions relating to a fair, though incorporated, do not apply to the market. [793]

Analysis of Incorporated Provisions.—The sections of the Clauses Act which follow sect. 1 are divided by headings into eleven groups, but sects. 12 to 16 and 21 to 41 are alone incorporated with the P.H.A., 1875, by sect. 167 of that Act. With the Diseases of Animals Act, 1894, sects. 1 to 5 and 10 to 50 are incorporated by sect. 32 (2) of that Act (g). Sect. 1 describes the effect of incorporation, and sects. 2 to 5 deal with interpretation and citation. By sect. 2 "prescribed" means "prescribed for that purpose in the special Act."

By sect. 3 (h) certain words and expressions in the Clauses Act, the special Act, and any Act incorporated therewith, have the meanings assigned to them in this section, unless there be something in the subject or context repugnant to such construction. Among these, "*the market or fair*" means the market or fair, and the works connected therewith, authorised by the special Act to be constructed or regulated; "*cart*" includes waggon, and also any carriage used wholly or chiefly for the conveyance of goods; and "*cattle*" includes horse, ass, mule, ram, ewe, wether, lamb, goat, kid or swine.

(u) See *post*, p. 361.

(b) 1 Halsbury's Statutes 407.

(c) 20 Halsbury's Statutes 393.

(d) S. 35 (2) and the proviso to s. 33 (3) of the Act of 1894 are repealed (outside London) by L.G.A., 1933.

(f) 11 Halsbury's Statutes 452.

(g) 11 Halsbury's Statutes 453.

(a) See title TOLLS AND STALLAGES.

(c) 13 Halsbury's Statutes 700.

(g) 1 Halsbury's Statutes 406.

Sects. 10, 11.—These sections are incorporated only with the Diseases of Animals Act, 1894. Sect. 10 allows the undertakers to enter upon any lands described in the special Act, and other lands purchased by or belonging to them, and set out such parts as they think necessary for the purposes of the market, and from time to time build and maintain such market-places and such stalls, sheds, pens and other buildings or conveniences for the use of the persons frequenting the market, and for weighing and measuring goods sold in the market, and for weighing carts, as they may think necessary, and to make and maintain on these lands roads and approaches for the convenient use of the persons resorting to the market. Sect. 11 provides that in the exercise of their powers the undertakers shall do as little damage as can be, and shall make full satisfaction for all damage sustained. This satisfaction is to be made in the manner provided in the Clauses Act, and by the special Act and any incorporated Act. It seems that sect. 6 of the Clauses Act, and not sect. 52 (i), provides the procedure for recovering satisfaction under sect. 11, and that the scope of sect. 11 is limited, by the heading to the group in which it occurs, to cases of damage caused by the construction of the authorised works. [794]

Sects. 12 to 16.—These are incorporated both with the P.H.A., 1875, and with the Diseases of Animals Act, 1894. Sect. 12 prescribes the notices to be given before the market is opened for public use. Sect. 13 prohibits certain sales outside the market-place after it has been opened for public use, and its effect is described *post*, at pp. 358—361. As to sect. 14, see *post*, p. 355.

By sect. 15 every person who sells or exposes for sale any unwholesome meat or provisions in the market is liable to a penalty of £5. Any inspector of provisions appointed by the undertakers may seize the unwholesome meat or provisions, and carry the same before a justice and obtain an order for its immediate destruction; and every person who obstructs or hinders the inspector is liable to a penalty of £5. A penalty of 40s. is imposed by sect. 16 for an assault upon or the obstruction of any market officer.

Sects. 17 to 20.—These relate to slaughter-houses and are only incorporated with the Diseases of Animals Act, 1894. Places for the slaughter of foreign and other animals may be provided by a diseases of animals authority under sect. 32 (1) of the Act of 1894, and sect. 17 of the Act of 1847 gives them incidental powers. Sect. 19 prohibits the slaughter of cattle in any place within the limits of the special Act, other than the slaughter-house so provided or one already in use, but as under sect. 32 (3) of the Act of 1894 the limits of the special Act seem to be the market, this provision would only prohibit slaughter in other parts of the market. Sect. 20 of the Clauses Act allows an officer appointed by the council to examine cattle or carcasses in the slaughter-house, and if found unfit for food to seize and carry the same before a justice, who may order the cattle or carcase to be destroyed or otherwise disposed of. [795]

Weighing.—Sects. 21 to 30, with respect to weighing goods and carts, are incorporated both with the Act of 1894 and the P.H.A., 1875 (k). Sect. 21 requires sufficient and proper weighing-houses or places for weighing or measuring the commodities sold in the market, with

(i) 11 Halsbury's Statutes 467.

(k) As to the provision of scales, etc., see Part II. of Sched. VI. to the Weights and Measures Act, 1878; 20 Halsbury's Statutes 304.

attendants, to be provided by the council. A buyer may require an article to be weighed or measured in the official scales or measures (sect. 22). Machines for weighing carts must also be provided under sect. 24, and upon the request of a buyer or seller, or his agent, the driver must take the cart, with or without its loading, to the nearest official weighing-machine, and, if required, again take the cart to be weighed after the discharge of the load (sect. 25). Sects. 26—30 impose penalties on drivers who refuse to take a cart to be weighed, and on persons who commit fraudulent acts in weighing.

As respect the weighing of cattle, the Act of 1847 is supplemented by the Markets and Fairs (Weighing of Cattle) Acts, 1887, 1891 and 1926 (l), which require accommodation for weighing cattle to be provided at all markets and fairs, in which tolls are authorised and are taken in respect of cattle by any company, corporation or person (see Act of 1887, sect. 1), unless exempted by an order of the M. of A. (m). A toll not exceeding 6d. may be charged under the schedule to the Act of 1926 for every head of cattle other than sheep or swine, and not exceeding 8d. for every five or less number of sheep or swine. Returns as to the number, weight and price of cattle must be sent to the M. of A. under sect. 3 of the Act of 1891 and the Markets and Fairs (Weighing of Cattle) Returns Order, 1905 (n).

Sects. 31 to 41.—These relate to stallages, rents and tolls and are incorporated both with the Act of 1875 and the Diseases of Animals Act, 1894. They are dealt with in the title TOLLS AND STALLAGES.

Sects. 42 to 49.—These relate to bye-laws, and apply to markets under the Diseases of Animals Act, 1894, but do not apply to markets under the P.H.A., 1875, though as sect. 167 of the P.H.A., 1875, confers a power of making bye-laws by reference to sect. 42 of the Act of 1847, the latter section must be referred to in order to ascertain for what purposes bye-laws for these markets can be made under sect. 167 of the Act of 1875 (o).

Sect. 50 relates to accounts (p). It does not apply to markets under the P.H.A., 1875; but applies to markets under the Diseases of Animals Act, 1894. [790]

MANAGEMENT OF MARKET

During the progress of a market or fair all persons are entitled, as of common right, to frequent the place in which it is held for the purpose of there buying and selling, and to bring into it the goods which they desire to sell there, being goods of the class for which the market or fair is held (q). Any person entitled to sell in a market may do so in whatever manner he may select, whether that be by private treaty or by public auction (r). While such is the general right of the public, the owner of the market or fair, on the other hand, has the general

(l) 11 Halsbury's Statutes 480—486.

(m) See Act of 1887, s. 9; Act of 1891, s. 1; and Act of 1926, s. 2.

(n) S.R. & O., 1905, No. 70.

(o) See *post*, p. 361.

(p) See *post*, p. 369.

(q) *Austin v. Whitford* (1746), Willes, 623; 33 Digest 528, 57; *Townend v. Woodruff* (1850), 19 L. J. Exch. 315; 33 Digest 545, 258; *Newcastle (Duke) v. Workson U.D.C.*, [1902] 2 Ch. 145 at p. 159.

(r) See *Nicholls v. Tavistock U.D.C.*, [1923] 2 Ch. 18; 33 Digest 529, 60; *London Corp'n. v. Lyons, Son & Co. (Fruit Brokers), Ltd.* (1934), 78 Sol. Jo. 877; Digest (Supp.). As to bye-laws, see *post*, p. 361. As to liability to stallage, see title TOLLS AND STALLAGES.

right of determining in what place it shall be held, and, so far as he is not tied down to a particular spot by the charter or statute under which he is acting, he may hold it wherever he pleases, or rather wherever he most conveniently can (*s*); for he has to find the land upon which he can hold it, and the mere fact that he has authority to hold it does not entitle him to take and use the land of other persons against their will (*t*). His duty is to find, within the area in which he is entitled to hold his market or fair, land to which the public will have free access while it is being held; but it is not necessary that a market-place or the way to it should be open to the public as of right while the market is not in progress (*u*).

It is now well settled that the owner of a market or fair is not bound, as a rule, to hold it upon his own land, but may hold it upon land belonging to other persons by their sufferance or permission, though, unless he has the actual possession of the land, he cannot claim stallage (*a*). If land be reserved by statute for a special purpose not consistent with the holding of a market or fair there, it follows necessarily that it may not be held there (*b*). The holding of markets and fairs in churchyards was forbidden by the Statute of Winchester, 18 Edw. 1, c. 6 (*c*). [797]

The practice of using a part of a public highway for a market place, which was a very common one in former times, still prevails, to a considerable extent, in the case of old markets; and it is not a misuse of the highway, if it can be shown by evidence, or be properly inferred from long usage, that the highway is dedicated subject to the right of holding the market there (*d*). A new street can be dedicated as a highway subject to the exercise therein of market rights. Where a modern street has existed for some years in an area over which a right to hold a market extends, and the market has been held in that street, as of right, from about the time when the street was first opened, it may be inferred that the highway was dedicated subject to the exercise therein of the franchise (*e*).

Statutes for the prevention of obstructions or other nuisances on highways ought not to be construed as prohibiting the exercise therein of market rights subject to which the highways exist (*f*); and a power to make bye-laws against such nuisances does not justify a bye-law which purports to interfere with such rights (*g*). But such rights must be exercised in a proper manner. Thus, where the owner of a market took stallage for the sheep-pens which he had the right to place on a

(*s*) *Dixon v. Robinson* (1686), 3 Mod. 107; 33 Digest 531, 86.

(*t*) See per COTTON, L.J., *A.-G. v. Horner* (1884), 14 Q. B. D. 245 at p. 260; 33 Digest 527, 45; *Newcastle (Duke) v. Workop U.D.C.*, [1902] 2 Ch. 145 at p. 160.

(*u*) See per Lord BLACKBURN in *A.-G. v. Horner* (1885), 11 App. Cas. 66 at p. 80.

(*a*) *Lockwood v. Wood* (1841), 6 Q. B. 31; 33 Digest 546, 273, where the dictum of LITTLEDALE, J., in *R. v. Starkey* (1837), 7 A. & E. 95; 33 Digest 534—5, 117, was not followed; *A.-G. v. Horner* (1884), 14 Q. B. D. 245, 254, 260; 11 App. Cas. 66. As to stallage, see title TOLLS AND STALLAGES.

(*b*) *A.-G. v. Southampton Corpn.* (1859), 29 L. J. (Ch.) 282; 33 Digest 535, 121.

(*c*) 11 Halsbury's Statutes 440.

(*d*) *Ekwood v. Bullock* (1844), 6 Q. B. 383; 33 Digest 537, 136; *A.-G. v. Horner* (1885), 11 App. Cas. 66; 33 Digest 532, 98.

(*e*) *Stepney Corpn. v. Gingell, Son and Foskett, Ltd.*, [1900] A. C. 245; 33 Digest 533, 104.

(*f*) *A.-G. v. Horner*, *supra*; *Great Eastern Rail. Co. v. Goldsmid* (1884), 9 A. C. 927; 33 Digest 524, 18; *Ball v. Ward* (1875), 33 L. T. 170; 26 Digest 416, 1351.

(*g*) *Ekwood v. Bullock*, *supra*.

highway, it was held that he was responsible for the nuisance which arose from his neglect to remove the sheep dung (*h*). [798]

Accommodation for the Public.—Where a market is held under a grant from the Crown which does not confine it to a spot defined by metes and bounds, but allows it to be held generally within some district, the position of the owner of the market was thus summed up by the judges in their opinion upon *The Islington Market Bill* (*i*). "There is no doubt but that the grantee of such a market may hold it anywhere within that district, or in more places than one, and may change the place in which it is held; and an obligation is cast upon him, by his acceptance of the grant, to provide convenient accommodation for all who are ready to buy and sell in the public market." And the consequences of his not providing a sufficient market-place were stated to be that though he cannot complain of sales outside the market by persons who are prevented from selling in the market by the want of convenient room (*h*), his breach of public duty furnishes a ground for a *scire facias* to repeal the patent by which the market was granted. As indicated *ante*, on p. 341, the Crown may grant a new market, to be held in the neighbourhood, so that the further market accommodation which the public requires may be provided, if that can be done without affecting the existing market rights injuriously.

It has been said that "The character and extent of the accommodation which must be afforded to the public who resort to the market will obviously vary with the circumstances of each case" (*l*). The very idea of a market is that it is a large place which will on market days be crowded; and the fact of a market being very much frequented is not evidence of misconduct on the part of those who hold it (*m*), though the owner of a market is under a general obligation to persons who come to the market-place to keep it in a reasonably safe condition (*n*).

A market owner may either permit any place within the limits of the market to be a place where articles may be sold, or he may fix particular places where sales may take place. He may also appropriate different places for the sale of different articles. It is always a question of fact whether any particular place has been appropriated in this manner. Probably a part of the market may be appropriated for sales by auction, but in such a case it must be available for sales by auction by all persons entitled to use the market (*o*).

If a local Act which regulates a market gives a particular class of persons the right to special accommodation in the market-place, an action to enforce the right may be brought against the owner of the market (*p*). [799]

(*h*) *Draper v. Sperring* (1861), 30 L. J. (M. C.) 225; 33 Digest 534, 107.

(*i*) (1885), 3 Cl. & F. 513; 33 Digest 552—3, 352.

(*h*) *Prince v. Lewis* (1826), 5 B. & C. 363; 33 Digest 548, 302; *Mosley v. Walker* (1827), 7 B. & C. 40; 33 Digest 531—2, 91; *London Corp. v. Lyons, Son & Co. (Fruit Brokers), Ltd.* (1934), 78 Sol. Jo. 877; Digest (Supp.).

(*l*) *Per Lord Watson, Magistrates of Edinburgh v. Blackie* (1886), 11 App. Cas. 665, 679; 33 Digest 328, 55.

(*m*) See *per* COTTON, L.J., and Lord SELBORNE in *Great Eastern Rail. Co. v. Goldsmid*, *ante*, p. 351, note (*f*). But unreasonable user (e.g. excessive noise) may constitute a nuisance; see *Bedford v. Leeds Corp.* (1913), 77 J. P. 430; 33 Digest 335, 129.

(*n*) *Laur v. Darlington Corp.* (1879), 5 Kx. D. 28; 33 Digest 528, 52; *Thomas v. Quartermaster* (1887), 18 Q. B. D. 685 at p. 697; 34 Digest 232, 1976.

(*o*) *London Corp. v. Lyons, Son & Co. (Fruit Brokers), Ltd.*, *supra*.

(*p*) *Bedford (Duke) v. Ellis*, [1901] A. C. 1; 33 Digest 529, 63.

Removal.—The owner of a market or fair has, as a rule, the right to remove it, whenever he thinks fit, to a new place, provided that (1) he keeps within the limits within which his market or fair may be lawfully held, and (2) he takes care to secure reasonable accommodation for the public (*q*); and if the old market-place has ceased to afford reasonable accommodation, it may be his duty to extend the site, or to change it (*r*). The removal of a charter market to an inconvenient place, prejudicial to the object of the grant, would allow the Crown to apply for the repeal of the grant (*s*).

A removal cannot be justified if it deprives the public of privileges which have hitherto been enjoyed, for instance, if it subjects the public to stallage, and there was no right to stallage in the old market-place (*t*). Nor can it be justified if it deprives particular persons of special market privileges which they have lawfully acquired from the market owner or his predecessors in title (*u*). And a statute requiring a particular place to be devoted to market purposes necessarily curtails the general right of removal (*a*). If the removal be unlawful, the public may still frequent the old market-place (*b*), which they may not do if the removal is lawful and reasonable and notice of the removal has been given (*c*). But an unlawful removal cannot justify the wrongful erection of a rival market (*d*).

Where the boundaries of a borough were extended by statute, it was held that the ancient borough market might be removed to a place outside the old but within the new boundaries (*e*). The removal of a market is not unlawful by reason merely that the owner of the old site thereby loses his power of charging for stallage (*f*). A removal need not be of the whole market: a market for the sale of various commodities may be split up, and a new place may be provided for the sale of some alone (*g*). [800]

Enlargement.—The owner of a market or fair has, as a rule, a right of enlarging the market or fair place, similar to the right which he has of removing it; and where a market has been granted without metes and bounds, the market-place may be enlarged or extended from time to time as its crowded state may require. Where the owner of a market imposes and accepts the payment of charges, levied on the occupiers of premises outside the existing bounds of the market, the proper inference, in the absence of any contrary explanation, is that the owner, by accepting the payment, agrees to treat the particular premises in respect of which the payment is made as being included within

(*q*) *Curwen v. Salkeld* (1803), 3 East, 538; 33 Digest 531, 59; *R. v. Cotterill* (1817), 1 B. & Ald. 67; 33 Digest 534, 111; *De Rutzen v. Lloyd* (1836), 5 A. & E. 456; 33 Digest 531, 90; *Edinburgh Magistrates v. Blackie* (1886), 11 App. Cas. 665; 33 Digest 538, 55.

(*r*) See per BAYLEY, J., in *Mosley v. Walker* (1827), 7 B. & C. 40; 33 Digest 531, 582, 91.

(*s*) Per Lord ELLENBOROUGH in *R. v. Cotterill*, *supra*.

(*t*) *R. v. Starkey* (1837), 7 A. & E. 95; 33 Digest 534—5, 117.

(*u*) *Ellis v. Bridgnorth Corpn.* (1863), 15 C. B. (N. s.) 52; 33 Digest 526, 37.

(*a*) *Edinburgh Magistrates v. Blackie*, *supra*.

(*b*) *R. v. Starkey*, *supra*.

(*c*) *Curwen v. Salkeld*, *supra*.

(*d*) *Midleton (Lord) v. Power* (1886), 19 L. R. Ir. 1; 33 Digest 552, note (*m*).

(*e*) *Dorchester Corpn. v. Ensor* (1869), L. R. 4 Exch. 335; 33 Digest 532, 94.

(*f*) *De Rutzen v. Lloyd*, *supra*.

(*g*) *Wortley v. Nottingham Local Board* (1869), 21 L. T. 582; 33 Digest 532, 93, see *post*, p. 363. For a form of notice of removal, see 9 *Ency. Forms* 203—204.

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(h) *Draper v. Sperring* (1861), 30 L. J. (M. C.) 225; 33 Digest 534, 107.

(i) (1855), 8 Cl. & F. 518; 33 Digest 552-3, 353.

(j) *Prince v. Lewis* (1826), 5 B. & C. 303; 33 Digest 548, 302; *Mosley v. Walker* (1827), 7 B. & C. 40; 33 Digest 531-32, 91; *London Corp. v. Lyons, Son & Co. (Fruit Brokers), Ltd.* (1904), 78 Sol. Jo. 877; Digest (Supp.).

(l) *Per Lord WATSON, Magistrates of Edinburgh v. Blackie* (1886), 11 App. Cas. 665, 679; 43 Digest 528, 55.

(m) *See per CARTER, L.J., and Lord SELBORNE in Great Eastern Rail. Co. v. Goldsmid, ante*, p. 351, note (j). But unreasonable user (e.g. excessive noise) may constitute a nuisance; see *Bedford v. Leeds Corp.* (1913), 77 J. P. 430; 33 Digest 535, 129.

(n) *Lae v. Darlington Corp.* (1879), 5 Ex. D. 28; 33 Digest 528, 52; *Thomas v. Quartermaine* (1887), 18 Q. B. D. 685 at p. 697; 34 Digest 232, 1976.

(o) *London Corp. v. Lyons, Son & Co. (Fruit Brokers), Ltd., supra*.

(p) *Bedford (Duke) v. Eltis*, [1901] A. C. 1; 33 Digest 529, 68.

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(g) *Curwen v. Salkeld* (1803), 3 East, 538; 33 Digest 531, 89; *R. v. Cotterill* (1817), 1 B. & Ald. 67; 33 Digest 534, 111; *De Rutzen v. Lloyd* (1836), 5 A. & E. 450; 33 Digest 531, 90; *Edinburgh Magistrates v. Blackie* (1886), 11 App. Cas. 665; 33 Digest 528, 55.

(f) See per BAYLEY, J., in *Mosley v. Walker* (1827), 7 B. & C. 40; 33 Digest 531, 532, 91.

(e) Per Lord ELLENBOROUGH in *R. v. Cotterill*, *supra*.

(d) *R. v. Starkey* (1837), 7 A. & E. 95; 33 Digest 534—5, 117.

(u) *Ellis v. Bridgnorth Corp.* (1863), 15 C. B. (N. S.) 52; 33 Digest 526, 37.

(a) *Edinburgh Magistrates v. Blackie*, *supra*.

(b) *R. v. Starkey*, *supra*.

(c) *Curwen v. Salkeld*, *supra*.

(d) *Middleton (Lord) v. Power* (1886), 19 L. R. Ir. 1; 33 Digest 552, note (m).

(e) *Dorchester Corp. v. Ensor* (1809), L. R. 4 Exch. 335; 33 Digest 532, 94.

(f) *De Rutzen v. Lloyd*, *supra*.

(g) *Worley v. Nottingham Local Board* (1860), 21 L. T. 582; 33 Digest 532, 93, see post, p. 868. For a form of notice of removal, see 9 Ency. Forms 203—204.

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the market, at least so long as the agreement to make such payments is in force. This is so whether the payments are designated as tolls, or are made by way of compensation to the owner in lieu of damages for disturbance of the market. The inclusion of a part of a building does not necessarily operate as an inclusion of the whole of that building (*h*). [801]

Places for Sales of Horses.—The owner of a market or fair in which horses are sold must comply with the requirements of the Acts of 1555 and 1589 (*i*), to prevent horse-stealing. A special open space for these sales must be appointed and limited yearly, and a proper person must be appointed to take the tolls and to keep the open space from 10 a.m. until sunset on the market or fair days. This official or his deputy must take the toll payable on a sale at the open space, and between 10 a.m. and sunset on the day of the sale, and not at any other place or time; and when he takes the toll he must have before him the parties to the sale, and the horse sold, and must make certain entries (*k*) concerning the sale in a book which must be provided for the purpose. The Acts impose penalties for non-compliance with their requirements and for false declarations or entries. [802]

Cattle, Sheep and Pig Markets.—Under sect. 22 (xix.)—(xxii.) of the Diseases of Animals Act, 1894 (*l*), the M. of A. & F. has power to make orders prohibiting or regulating the holding of markets, fairs, exhibitions and sales of cattle, sheep, goats, other ruminating animals, or swine (*m*), and for prescribing and regulating the cleansing and disinfection of such places. Under sect. 22 (ix.) the Minister may make orders prohibiting or regulating the exposure of diseased or suspected animals in markets or fairs, and their placing in lairs, etc., adjacent to markets or fairs; and by sect. 21 the Minister may by order make provision respecting animals found to be affected with pleuro-pneumonia or foot-and-mouth disease while exposed for sale in a market or fair (*n*). [808]

Market and Fair Days.—Where the right to hold a market or fair rests on a grant from the Crown or on a local Act, the days upon which it may lawfully be held are generally fixed by the grant or Act. Where the right rests upon a good prescriptive title, or upon the doctrine of a lost grant, the inference may be drawn that the days upon which it has been customarily held are the proper and lawful days for holding it. But when a market has been granted for certain days in the week, it is not possible to infer a lost grant for days other than those in the extant grant. The market owner could allow sellers and buyers

(*h*) *London Corp'n. v. Lyons, Son & Co. (Fruit Brokers), Ltd.* (1984), 78 Sol. Jo. 877; Digest (Supp.). For the general principle, see *A.-G. v. Horner* (1885), 11 App. Cas. 66; 35 Digest 532, 98; *Stepney Corp'n. v. Giggell, Son & Paskett, Ltd.*, [1909] A. C. 245; 33 Digest 539, 104.

(*i*) (1555), 2 & 3 Ph. & M. c. 7; (1589—1589), 31 Eliz. c. 12; 11 Halsbury's Statutes 445—450.

(*k*) (1) Colour and at least one special mark of the animal; (2) name and address of buyer and seller; (3) true consideration for the transaction; (4) a statement that the official knows the seller and his name and address or a statement of the name and address and occupation of a credible person declaring that he knows the name, address and occupation of the seller.

(*l*) 1 Halsbury's Statutes 401.

(*m*) See definition of "animals" in s. 59; 1 Halsbury's Statutes 420.

(*n*) As to the powers of the Ministry, see titles DISEASES OF ANIMALS AND AGRICULTURE AND FISHERIES, MINISTRY OF.

to come upon his land to traffic during the remainder of the week, but he could not charge tolls (*o*). In the case of old markets and fairs, it may be necessary, for the purpose of ascertaining upon what days they ought now to be held, to consult sects. 3, 4 of the Calendar (New Style) Act, 1750 (*p*). [804]

The Act 27 Hen. 6, c. 5 (*q*), which is still in force, required all markets and fairs to cease from all showing of all goods or merchandises, necessary victual only excepted, upon certain days in the year, upon pain of forfeiture of the goods shown to the owner of the franchise. These days are Sundays (the exception of "the four Sundays in harvest" having been removed by the 13 & 14 Vict. c. 23), Good Friday, Ascension Day, All Saints' Day, and two days which ceased to be holy days by 5 & 6 Edw. 6, c. 3 (*r*), namely, Corpus Christi (the Thursday after Trinity Sunday) and the Feast of the Assumption (August 15th). The Act of Henry 6 enabled the owners of markets and fairs which, as granted, could be held only upon the above-mentioned days, or any of them, to hold them on other days, not more than three days later or earlier. The Act does not prohibit a market or fair from being held on the days in question so as to affect the rights of the owner of the franchise, but merely renders persons, who show their goods contrary to its provisions, liable to have them forfeited to that owner (*s*). The Act seems to extend only to franchise markets and fairs. [805]

By the Statute of Northampton (*t*) as often as a charter or prescriptive fair (but not a market) is held, the owner must at the beginning, proclaim for how long the fair will endure (*u*). Should he hold it for a longer time than he ought, he is liable, by the same statute, to have his franchise seized into the hands of the Crown, if the appropriate proceedings are taken (*a*).

By sect. 6 of the Fairs Act, 1873 (*b*), the Home Secretary was given a limited power of making an order for the changing, prolonging or curtailing of the time at which a fair may be lawfully held.

If the days for holding a charter market or fair be changed unlawfully, the Crown may proceed against the owner by *scire facias* to obtain a repeal of the charter, or it may proceed by information in the nature of a *quo warranto*. An information appears to be the proper course where a market, whether authorised by charter or by statute, is held, not only on the proper days, but also on unlawful days as well, and an injunction can be obtained by this proceeding to restrain the owner from holding it on the unlawful days (*c*).

Where a market or fair is held under an Act with which the Markets and Fairs Clauses Act, 1847, is incorporated, sect. 14 of the Clauses Act (*d*) requires the undertakers to hold it "on the prescribed days (if any), and on such other days as the undertakers shall appoint from

(*o*) *A.-G. v. Horner* (No. 2), [1912] 2 Ch. 140; 33 Digest 533, 103.

(*p*) 10 Halsbury's Statutes 389, 390.

(*q*) 11 Halsbury's Statutes 443.

(*r*) 6 Halsbury's Statutes 1185.

(*s*) *Comyns v. Boyer* (1596), Cro. Eliz. 485; 33 Digest 531, 79; *Cork Corp'n. v. Shinkwin* (1825), Smith & B. 895, at p. 399; 33 Digest 531, note 80 i.

(*t*) 2 Edw. 3, c. 15; 11 Halsbury's Statutes 442.

(*u*) For a form of proclamation, see 9 Ency. Forms 202—203.

(*a*) See *Middletown (Lord) v. Power* (1880), 10 L. R. Ir. 1; 33 Digest 500, note (*d*); see also the 5 Edw. 3, c. 5; 11 Halsbury's Statutes 441.

(*b*) 11 Halsbury's Statutes 479. See *post*, p. 364.

(*c*) *A.-G. v. Horner* (1884), 14 Q. B. D. 245; 33 Digest 527, 45.

(*d*) 11 Halsbury's Statutes 457.

time to time by any bye-law to be made in pursuance of this or the special Act." Consequently, by means of a bye-law, any or every week-day can, as a rule, be made a market-day for markets established under the P.H.A., 1875, or the Diseases of Animals Act, 1894 (e). [806]

Hours.—As regards the hours for a market or fair, it is a well-established rule that there cannot be market overt before sunrise or after sunset (f); and by an Act of 1555 (g) horse markets and fairs may be held only between 10 a.m. and sunset. But there are many places in which markets, chiefly for catables, are now in fact held in the evening, and the rule seems only to be of importance, where a question arises whether a good title to goods has been acquired by buying them in market overt. For markets under the P.H.A., 1875, or the Diseases of Animals Act, 1894, a bye-law can be made under sect. 42 of the Clauses Act (h) fixing the hours for holding them on each day on which they are held. Markets and stalls in which assistants are employed for hire are shops for the purposes of the Shop Acts (i). [807]

Protection from Disturbance.—The owner of a market or fair is entitled at common law to the enjoyment of his franchise privileges without disturbance by the wrongful acts of other persons. For any such disturbance he can recover damages by action, and he can also obtain (in a case proper for such an injunction) an injunction to restrain its repetition or continuance. If an Act for the regulation of his market gives him a special remedy against infringement of his privileges, his right to an injunction is not excluded unless the Act expressly so provides (k). [808]

Rival Market or Fair.—A common form of unlawful disturbance to a market or fair consists in the setting up, within a certain distance from it, of a rival market or fair. The distance within which no rival market or fair may be set up is fixed by common law at seven miles (l). If a new unauthorised market be set up within that distance, and be held on the same days as the old one, the law presumes that the new market is injurious to the old, and actual damage need not be proved to support an action for the disturbance though this would appear to be necessary where the rival market is itself a later charter or franchise market (m). But if the new market be held on different days, no such presumption is made, and, to support the action, actual damage must be proved (n). Loss of profits by reason of the setting up of the new market is damage, and the loss need not be of tolls; loss of stallage is sufficient (o).

(e) As to bye-laws, see *post*, p. 362.

(f) 2 Inst. 714; see *Taylor v. Chambers* (1605), Cro. Jac. 68; 33 Digest 502, 470.

(g) 2 & 3 P. & M. c. 7; 11 Halsbury's Statutes 445.

(h) 11 Halsbury's Statutes 464.

(i) See title SHOPS.

(j) *Stevens v. Chosen*, [1901] 1 Ch. 894; 33 Digest 550, 415.

(k) *Yard v. Ford* (1670), 2 Wms. Saund. 172; 33 Digest 550—1, 330.

(l) *Morpeth Corp. v. Northumberland Farmers' Auction Mart Co.*, [1921]

2 Ch. 154; 33 Digest 540, 316. See also *Dorchester Corp. v. Ensor* (1869), L. R.

4 Ex. 335; 33 Digest 532, 94; *Yard v. Ford*, *supra*; *Islington Market Bill* (1835),

3 Cl. & F. 513; 33 Digest 502—3, 363.

(n) *Winsford Entertainments, Ltd. v. Winsford U.D.C.* (1924), 23 L. G. R. 254; 33 Digest 551, 333; *Ekkes v. Payne* (1879), 12 Ch. D. 408; 33 Digest 551, 332

(where the head-note is misleading). See also *Yard v. Ford*, *supra*.

(o) *Cork Corp. v. Shinkwin* (1825), Smith & B. 395; 33 Digest 550, 324 n.

In *Morpeth Corp. v. Northumberland Farmers' Auction Mart Co.*, *supra*, the point

To support an action of this character it is not necessary to prove that the defendant has pretended to have franchise rights (*p*), or has been infringing the rights of the Crown (*q*). It is sufficient to show that he has been maintaining or encouraging a concourse of buyers and sellers upon land in his occupation by furnishing a dépôt for their benefit (*r*), or by holding or providing for public auctions, so that persons can buy and sell marketable commodities without recourse to the plaintiff's market (*s*).

But the privileges which the owner of a market or fair enjoys at common law do not, as a rule, enable him to prevent persons from merely selling their own goods in their own shops or other premises in the neighbourhood of the market or fair (*t*). A right to prevent such sales, even on market days, is not incident to the grant of a franchise market, and can exist, apart from statute, only by virtue of immemorial custom or prescription (*u*). The cases which have been already cited show that there is a well-recognised distinction between selling one's own goods on one's own premises and providing premises on which other persons can buy and sell their goods.

The establishment of a rival market cannot, as a rule, be justified by a grant from the Crown, for the Crown cannot derogate by later grants from earlier ones (*a*). Nor can it be justified by the crowded state or insufficiency of accommodation in the old market (*b*). The intention or motive with which the rival market is set up is immaterial (*c*). An interlocutory injunction will not, as a rule, be granted, if the defendant undertakes to keep an account of his profits (*d*), and the circumstances of the case, as disclosed at the trial, may be such as to lead the court to think that no injunction is necessary (*e*).

was left undecided as to whether the owners of an ancient charter market without tolls, who have acquired a power of charging tolls of another kind under the Clauses Act of 1847 cannot as proof of damage rely on the loss of these tolls as profits which they are enabled to make by virtue of their franchise.

(*p*) *Yard v. Ford* (1670), 2 Wms. Saund. 172; 33 Digest 550—1, 330.

(*q*) *Mosley v. Chadwick* (1782), 7 B. & C. 47 n.; 33 Digest 550, 324.

(*r*) *Great Eastern Rail. Co. v. Goldsmid* (1884), 9 App. Cas. 927; 33 Digest 524—5, 18; *Birmingham Corp. v. Foster* (1894), 70 L. T. 871; 33 Digest 552, 343.

(*s*) *Wilcox v. Steel*, [1904] 1 Ch. 212; 33 Digest 550, 322. See also *Dorchester Corp. v. Ensor* (1869), L. R. 4 Ex. 335; 33 Digest 532, 94; *Ehves v. Payne* (1870), 12 Ch. D. 408; 33 Digest 551, 332; *London Corp. v. Low* (1870), 42 L. T. 16; 33 Digest 550, 329. There is no disturbance if there has been an infringement of a right to sell by auction within the market, by a refusal of facilities to exercise it, whether on the ground that there is no room within the market, or arbitrarily, when there is sufficient room; *London Corp. v. Lyons, Son & Co. (Fruit Brokers), Ltd.* (1934), 78 Sol. Jo. 877; Digest (Supp.). In *Horner v. Freeman, W. N.* (1884) 228, the disturbance consisted in the selling of goods from carts and vans standing in the street; the goods belonged to persons who employed the defendant to sell them upon commission. "In all these cases you must look at the facts to see whether what is done does or does not amount to a disturbance" (*per ROMER, L.J.*, *Wilcox v. Steel*, *supra*).

(*t*) *Manchester Corp. v. Lyons* (1882), 22 Ch. D. 287; 33 Digest 551, 342; *Macleesfield Corp. v. Chapman* (1843), 12 M. & W. 18; 33 Digest 551, 333. See also *Hailsham Cattle Market Co. v. Tobnan*, [1915] 2 Ch. 1; 33 Digest 558, 396.

(*u*) *Pennyn Corp. v. Best* (1878), 3 Ex. D. 292; 33 Digest 551, 339; *Mosley v. Walker* (1897), 7 B. & C. 40; 33 Digest 531—2, 91; *Macleesfield Corp. v. Pedley* (1883), 4 B. & Ad. 397; 33 Digest 551, 336; *Devizes Corp. v. Clark* (1885), 3 A. & E. 506; 33 Digest 551, 337.

(*a*) *Islington Market Bill*, *ante*, p. 356, note (*m*); *Morpeth Corp. v. Northumberland Farmers' Auction Mart Co.*, *ante*, p. 354, notes (*m*) and (*o*).

(*b*) *Great Eastern Rail. Co. v. Goldsmid*, *supra*.

(*c*) *Wilcox v. Steel*, *supra*.

(*d*) *Ehves v. Payne*, *supra*.

(*e*) *Birmingham Corp. v. Foster*, *supra*, note (*r*).

An injunction can be obtained, not only where the disturbed market is a charter market, but also where it is a statutory one. In the case of a statutory market, however, the statutes relating to it may contain express provisions by reason of which the position of the owner differs, as regards disturbance, from the position of the owner of a franchise market (f).

Where the owner of a franchise market has allowed a rival market to be held for twenty years or more without interruption, the inference may be drawn that the rival market is being held under his own grant of a part of his market rights (g). But no length of time, however long a disturbance of market rights has continued, is an absolute bar of itself to an action for the continuing disturbance. [809]

Evasion of Toll.—A person commits a fraud upon a market, for which an action lies against him, if he uses the market itself in order to find customers for his goods, but keeps the goods outside the market with the intention of depriving the owner of the market of his right to toll (h). For this reason, where tollable goods, the bulk of which is not brought into the market-place, are there sold by sample, an action for damages for deprivation of toll may generally be maintained by the owner of the market against the seller (i); but it cannot be maintained against a buyer by sample who has not done any act to induce the seller not to bring the bulk into the market-place (k). The general rule regarding sales outside the market is that no action lies in respect of them, unless it is proved either that the defendant's intention was to get the benefit of the market and evade liability for toll, or that what the defendant did amounted to his providing or participating in a rival market (l). Where the case is not one of a rival market, it is a good defence, if the facts support it, that there was not, at the time of the sale, sufficient room for selling in the market itself, or that there was not usually room there and the seller had no notice of there being room upon the particular occasion complained of (m). [810]

Sales Outside Market.—Sect. 18 of the Clauses Act (n) gives a special protection against certain sales outside the market. It is incorporated both with the P.H.A., 1875, and the Diseases of Animals Act, 1894. The section is as follows :

"After the market-place is opened for public use every person other than a licensed hawkers who shall sell or expose for sale in any place within the prescribed limits, except in his own dwelling-place or shop, any articles in respect of which tolls are by the special Act authorised to be taken in the market, shall for every such offence be liable to a penalty not exceeding forty shillings."

Apparently the section is not limited to the times during which the

(f) *Abergavenny Improvement Commissioners v. Straker* (1880), 42 Ch. D. 83; 33 Digest 557—s, 395.

(g) See per LE BLANC, J., *Campbell v. Wilson* (1803), 3 East 204, at p. 302; 19 Digest 65, 363, explaining *Holcroft v. Heel* (1799), 1 B. & P. 400; 33 Digest 525, 29.

(h) *Bridgland v. Shapter* (1839), 5 M. & W. 375; 33 Digest 530, 73.

(i) *Tewkesbury Corp. v. Bricknell* (1800), 2 Taunt. 129; 33 Digest 547, 227.

(j) *Tewkesbury Corp. v. Dixon* (1805), 6 East 438; 33 Digest 542—3, 204.

(k) *Wilkes v. Steel*, [1904] 1 Ch. 212; 33 Digest 550, 332; *Downshire (Marquis) v. O'Brien* (1887), 19 L. R. Ir. 280; 33 Digest 540, 314 d. See ante, p. 357.

(l) *Prince v. Lewis* (1826), 5 B. & C. 363; 33 Digest 548, 302; *Islington Market Bill* (1885), 9 Cl. & F. 513; 33 Digest 552—3, 352.

(n) 11 Halsbury's Statutes 437.

market is held; it operates so soon as the market-place has been opened for public use and thenceforth remains at all times in force.

Licensed hawkers are not affected, meaning, not only a hawker who has been licensed under the Hawkers Act, 1888 (*o*), but also a pedlar, trading as a pedlar, who has a pedlar's certificate under the Pedlars Acts, 1871 and 1881 (*p*). For by sect. 6 of the Pedlars Act, 1871, the term "licensed hawker" in the Clauses Act of 1847 is to include a pedlar holding such a certificate. It has, however, been held that a pedlar's certificate does not exempt the holder from sect. 13 of the Act of 1847, while he is trading, not on foot as a pedlar, but with a beast of burden as a hawker (*q*); see the definitions in sect. 2 of the Hawkers Act, 1888, and sect. 3 of the Pedlars Act, 1871. A person who has no hawker's licence or pedlar's certificate is not exempted from sect. 13 by reason that sect. 3 (3) of the Hawkers Act, 1888, or sect. 23 of the Pedlars Act, 1871 (*r*), relieves him from the necessity of having such licence or certificate: he is not a licensed hawker (*s*). But a person who has a hawker's licence is exempted from sect. 13 although his trade is such that, by reason of sect. 3 (3) of the Hawkers Act, 1888, he does not require a licence under that Act: he is a licensed hawker (*t*). [811]

It has been held that a principal cannot be held liable for a sale by an agent in contravention of the section where this is contrary to his instructions (*u*).

"The prescribed limits" in sect. 13 means, by sect. 2 (*x*), "the limits prescribed for that purpose in the special Act." Where a market has been established under the P.H.A., 1875, "... the limits of the special Act" are, under sect. 316, the council's borough or district or the part of a rural district in which sect. 166 is in force. Presumably sect. 13 does not prohibit sales in the market-place itself, at any rate while the market is being held there. By sect. 32 (3) of the Diseases of Animals Act, 1894 (*a*), "the prescribed limits" are the limits of lands acquired or appropriated for the purpose of the market, and consequently sect. 13 is hardly applicable to such a market.

Upon the question what constitutes "a sale within" the prescribed limits some of the decisions are hardly reconcilable. Where a contract of sale is made, within the limits, of goods which are within the limits at the time of the contract, and the goods appropriated to the contract are delivered within the limits, it seems clear that there is "a sale within" the limits (*b*). It seems also clear that the section does not prohibit a delivery within the limits, under a contract of sale made outside the limits, of goods which were outside the limits when the contract was made, and which were appropriated to the contract

(*o*) 16 Halsbury's Statutes 579—582.

(*p*) 11 Halsbury's Statutes 471—480.

(*q*) *Woolwich Local Board v. Gardiner*, [1895] 2 Q. B. 497; 33 Digest 568, 535, where *Howard v. Lupton* (1875), L. R. 10 Q. B. 598; 33 Digest 568, 537, was not followed.

(*r*) 11 Halsbury's Statutes 477.

(*s*) *Openshaw v. Oakley* (1889), 53 J. P. 740; 33 Digest 565—6, 515.

(*t*) *Llandudno U.D.C. v. Hughes*, [1900] 1 Q. B. 472; 33 Digest 567, 527.

(*u*) *Wake v. Dyer* (1911), 104 L. T. 448; 33 Digest 555, 376.

(*x*) 11 Halsbury's Statutes 452.

(*a*) 1 Halsbury's Statutes 406.

(*b*) *Londonderry Corp'n. v. McEllinney* (1875), 9 I. R. C. L. 61; 33 Digest 559, note (*p*).

before they were brought within the limits (c). But according to *Exeter Corporation v. Heaman* (d) there is a "sale within" the limits if the goods are delivered within the limits, and are not appropriated to the contract of sale until after they have been brought within the limits. The position is, however, somewhat clearer since the decision in *Lambert v. Rowe* (e). Here two pigs which had been sold outside the market limits, were killed and delivered to a shop within the limits, and it was considered that "sell" in sect. 13 must be construed in its popular rather than in its strict legal sense. It was held that the pigs were sold when the agreement was made, even though the property in them did not pass until delivery, and that therefore the seller had not committed an offence in not paying toll. [812]

The section exempts from its operation sales in the seller's own dwelling-place or shop (f). An auction room may, however, be a shop, and if it be such the benefit of the exception in favour of shops is not lost by reason merely of the sales being by auction (g).

The cases cited in note (f) show that the question whether or not a particular place falls within the exemption must be determined by considering (1) all the facts relating to the place, including the character of the trade carried on thereat, and (2) the aim of the section, which is to protect the market from rival markets and evasions of toll, but not to interfere with shopkeepers who conduct their business in the ordinary way. It is conceived that a person who sells goods, not in his own shop, but in his master's shop as the shop-owner's servant, commits no offence against the section. [813]

Articles are not excepted from the operation of sect. 13 by reason of their having been previously bought in the market and of toll having been paid when they were thus bought (h). Articles are not "exposed for sale" while they are in process of delivery under a contract of sale or "mutual course of dealing" (i). "Article," as used in the section, may include a horse (k). Sect. 13 extends only to articles in respect

(c) *Bourne v. Lowndes* (1858), 22 J. P. 354; 33 Digest 554, 360; *Stretch v. White* (1861), 25 J. P. 485; 33 Digest 558-4, 358.

(d) (1877), 37 L. T. 534; 33 Digest 554, 362. This case was followed in *Torquay Market Co. v. Burridge* (1883), 48 J. P. 71; 33 Digest 554, 363. In neither of these two cases was reference made to *Stretch v. White*, *supra*.

(e) [1913] 1 K. B. 28; 33 Digest 554, 361.

(f) The following places have been held not to fall within this exemption: ship moored to wharf in canal (*Wiltshire v. Baker* (1861), 11 C. B. (N. S.) 287; 33 Digest 556, 362); covered enclosed skittle-ground which seller hired temporarily to sell his goods (*Hooper v. Kenshole* (1877), 2 Q. B. D. 127; 33 Digest 557, 359); yard with pens behind inn, which a pig-seller similarly hired (*Perkins v. Arber* (1873), 37 J. P. 406; 33 Digest 556, 357, see also *Pope v. Whalley* (1865), 29 J. P. 124; 33 Digest 558-6, 377); large yard with sheds occupied by seller adjacent to his house, and used by him for sales of his own sheep (*Mellole v. Davies* (1875), 1 Q. B. D. 59; 33 Digest 556-7, 358); extensive premises, comprising hall and yard similarly occupied, and used for sale by public auction of other persons' cattle and sheep (*Fearon v. Mitchell* (1872), L. R. 7 Q. B. 690; 33 Digest 526, 39. See also *Llandaff and Canton Market Co. v. Lyndon* (1860), 8 C. B. (N. S.) 515; 33 Digest 556, 360). In *Askearth v. Heyworth* (1869), L. R. 4 Q. B. 316; 33 Digest 556, 355, it was held that a wooden shed attached to a house and shop, which had long been used for exposing vegetables for sale, was part of the house or shop. In *Haynes v. Ford*, [1911] 2 Ch. 237; 33 Digest 557, 360, premises were held to come within the exemption for shops, though part only was so used, the other part being a warehouse where goods were sold on commission.

(g) *Wiltshire v. Willett* (1861), 11 C. B. (N. S.) 240; 33 Digest 557, 362.

(h) *Black v. Sackett* (1860), 10 B. & S. 639; 33 Digest 548, 368.

(i) *White v. Yeovil Corp.* (1892), 61 L. J. (M. C.) 213; 33 Digest 554, 360; *Newton-in-Makerfield U.D.C. v. Lyon* (1900), 69 L. J. (Q. B.) 250; 33 Digest 554, 368.

(k) *Llandaff and Canton Market Co. v. Lyndon*, *supra*, note (f).

of which tolls are authorised to be taken in the market. "Toll" here means toll payable upon the sale, or exposure for sale, of an article in the market, and does not include a charge in the nature of stallage (*l*).

An offence against sect. 13 cannot be condoned by a subsequent payment of toll (*m*); and the section does not render the offender liable to toll. By sect. 41 of the Clauses Act, a toll is not payable unless it is included in the list of tolls exhibited pursuant to that section. To support a prosecution under sect. 13, evidence should be given of the list of tolls actually exhibited. [814]

Bye-Laws.—At common law, the powers which owners of markets or fairs have for regulating them do not, it is conceived, extend to the making of bye-laws enforceable against the public by penalties.

Under sect. 167 of the P.H.A., 1875 (*n*), a borough or district council may, with respect to any market belonging to them, make bye-laws for any of the purposes mentioned in sect. 42 of the Markets and Fairs Clauses Act, 1847, so far as those purposes relate to markets. Bye-laws made under sect. 167 of the Act of 1875 must be confirmed by the M. of H. under sect. 184 of the Act (*o*), and consequently the procedure for making the bye-laws, the fines for their contravention and the mode in which the bye-laws are to be proved are now governed by sects. 250—252 of L.G.A., 1933 (*p*), instead of by the Act of 1875. Sects. 42 to 49 of the Clauses Act are not incorporated with the P.H.A., and do not apply to the bye-laws under consideration. Sect. 42 is referred to only with a view of indicating for what purposes the bye-laws may be made. [815]

Bye-laws for a market provided under the Diseases of Animals Act, 1894, may be made by the local authority providing it (*q*). Sect. 32 (2) of the Act of 1894 (*r*) incorporates with that Act sects. 42 to 49 of the Clauses Act of 1847 (*s*); and sect. 32 (8) provides that bye-laws shall be approved by the M. of A. & F. "which approval shall be sufficient without any other approval or allowance, notice of application for approval being given, and proposed bye-laws being published before application, as required by" the Clauses Act. In addition to bye-laws for the purposes mentioned in sect. 42 of the Clauses Act, the local authority providing the market may, under sect. 32 (4) of the Act of 1894 (*t*), make bye-laws imposing tolls (*u*). The requirements of the Clauses Act as to giving notice of application for approval of bye-laws are in sect. 45 of the Clauses Act, and the requirements as to publishing proposed bye-laws before application are in sect. 46. The bye-laws must not be repugnant to the laws of England, or to the provisions of the Clauses Act or the special Act, or of any Act

(*l*) *Caswell v. Cook* (1862), 11 C. B. (N. S.) 637; 33 Digest 555, 374. It has also been held that a toll prescribed for "every cart containing milk," etc., was a toll on the cart and not on the sale of milk, and that therefore the sale of milk from the cart within the prescribed limits was not an offence under sect. 13. *Jenkins v. Thomas* (1910), 104 L. T. 74; 33 Digest 555, 375.

(*m*) *Carter v. Parkhouse* (1870), 34 J. P. 498; 33 Digest 559, 416.

(*n*) 13 Halsbury's Statutes 695. Applied to R.D.Cs. by s. 1 of the P.H.A., 1908; 13 Halsbury's Statutes 948.

(*o*) 13 Halsbury's Statutes 705.

(*p*) 26 Halsbury's Statutes 440—443. See title BYE-LAWS.

(*q*) *Scott v. Glasgow Corpn.*, [1899] A. C. 470; 33 Digest 538, 146.

(*r*) 1 Halsbury's Statutes 406.

(*s*) 11 Halsbury's Statutes 465, 466.

(*t*) 1 Halsbury's Statutes 407.

(*u*) See title TOLLS AND STALLAGES.

incorporated therewith. They must be made under the common seal of the council; and, if they affect persons other than the officers and servants of the council, they must be printed and published as provided by sect. 47 (*a*). By sect. 48 of the Clauses Act (*b*) the council may by the bye-laws impose such reasonable penalties as they think fit, not exceeding £5 for each breach of them, but every bye-law must be so framed as to allow the justices to order payment of part only of the penalty. The publication of the bye-laws when confirmed and the mode of proving them are dealt with in sects. 47—49 of the Clauses Act (*c*). [816]

Purposes for which Bye-Laws may be made.—By sect. 42 of the Clauses Act (*d*) the council may from time to time make such bye-laws as they think fit for all or any of the following purposes:

(i.) For regulating the use of the market-place and the buildings, stalls, pens and standings therein, and for preventing nuisances or obstructions therein, or in the immediate approaches thereto;

(ii.) For fixing the days, and the hours during each day, on which the market shall be held.

(iii.) For certain purposes relating to slaughter-houses.

(iv.) For regulating the carriers resorting to the market, and fixing the rates for carrying articles carried therefrom within the limits of the special Act;

(v.) For regulating the use of the weighing machines provided by the council, and for preventing the use of false or defective weights, scales or measures;

(vi.) For preventing the sale or exposure for sale of unwholesome provisions in the market (*e*). [817]

Decisions upon Bye-Laws.—The following bye-laws for regulating the use of market-places have been upheld as valid. A bye-law under sect. 42 of the Clauses Act of 1847 making a reasonable reservation of a part of the market-place for the sale of particular articles and prohibiting the sale of other articles in the part so reserved (*f*); a bye-law made under a local Act similarly reserving a part of the market-place for sales by wholesale and prohibiting sales by retail in that part (*g*); a bye-law under sect. 42 of the Clauses Act as incorporated with the Diseases of Animals Act, 1894, providing that certain sale-rings in the market should be used only for public sales by auction on conditions of sale equally applicable to all bidders, and prohibiting their use for private sales, or for sales to any limited number of persons, or for sales in which any class of the public are excluded from bidding (*h*); a bye-law under sect. 42 as incorporated with the P.H.A., 1875, prohibiting sales of cattle by auction in the market-place before noon (*i*). Where the effect of a bye-law made under sect. 42 was entirely to prohibit the introduction into the market-place, without the officials' leave, of a class of articles which came within the classes for which the market had been established, it was held that the bye-law

(a) As to bye-laws prohibiting sales by auction, see *ante*, p. 350.

(b) 11 Halsbury's Statutes 465.

(c) *Ibid.*, 466.

(d) *Ibid.*, 464, 465.

(e) Model bye-laws as to markets have been framed by the M. of H., and may be purchased of H.M. Stationery Office, Kingsway, W.C.2.

(f) *Swage v. Brook* (1863), 15 C. B. (N. S.) 264; 33 Digest 537, 142.

(g) *Strike v. Collins* (1886), 50 J. P. 741; 33 Digest 538, 145.

(h) *Scott v. Glasgow Corpn.*, [1899] A. C. 470; 33 Digest 538, 146.

(i) *Collins v. Wells Corpn.* (1885), 1 T. L. R. 328; 33 Digest 537, 143.

was invalid as a general restraint of trade (*k*) as was also a bye-law prohibiting sales by auction without the consent of the market superintendent (*l*), and a bye-law made by a harbour company under a local Act, prohibiting the gutting of fish, which had a prohibitory effect on trade (*m*). Bye-laws for regulating a market-place usually involve a partial restraint of trade, and such restraint, if reasonable, is generally valid (*n*). [818]

Cold-Air Stores.—A local authority who have established a market may, with the consent of the M. of H., provide a cold-air store or refrigerator for the storage and preservation of meat and other articles of food, and may make reasonable charges for its use (*o*). Before applying for the Minister's consent, notice of the intention to do so must be advertised, and the Minister must consider any objection to the proposal, and, if an objection is made and not withdrawn, a local inquiry must be held at which all persons interested must be permitted to attend and make objections (*p*). The section does not need adoption. [819]

Accounts.—Upon the general subject of accounts of local authorities, see title ACCOUNTS OF LOCAL AUTHORITIES.

A council who have provided a market under the Diseases of Animals Act, 1894, must comply with sect. 50 of the Clauses Act (*q*), which requires in every year an annual account in abstract, to December 31 or to some other convenient day, to be forwarded to the clerk of the peace. The copy is to be open to the inspection of the public at all reasonable hours on payment of 1s. for every such inspection. The local authority, if they omit to prepare the account or to send the copy, will be liable to a penalty of £20 for every such omission.

A council who have provided such a market must, by sect. 32 (6) of the Act of 1894, make such periodical returns to the M. of A. & F. as the Ministry require of their expenditure and receipts in respect of the wharf or other place provided under the section.

Sect. 244 of the L.G.A., 1933 (*r*), requires the clerk of a local authority to send to the M. of H. a return for each year ending March 31, of all sums levied or received in respect of any tolls or dues leviable under any enactment relating to markets unless the accounts are subject to audit by a district auditor. [820]

REPRESENTATIONS TO HOME SECRETARY AS TO FAIRS

By sects. 27 and 32 of the L.G.A., 1894 (*s*), a borough council or district council may make a representation to the Home Secretary

(*k*) *Wortley v. Nottingham Local Board* (1869), 21 L. T. 532; 33 Digest 532, 93. See also *Stepney Corp'n. v. Gingell, Son & Foskett, Ltd.*, [1909] A. C. 245; 33 Digest 533, 104.

(*l*) *Nicholls v. Tavistock U.D.C.*, [1923] 2 Ch. 18; 33 Digest 529, 60.

(*m*) *Sutton Harbour Improvement Co. v. Foster* (1920), 89 L. J. (K. B.) 829; 33 Digest 536, 134.

(*n*) *Swage v. Brook*, ante, p. 362, note (*f*); *Sutton Harbour Improvement Co. v. Foster* (No. 2) (1920), 89 L. J. (Ch.) 540; 33 Digest 536—7, 135.

(*o*) P.H.A., 1925, s. 71 (1); 13 Halsbury's Statutes 1147. The question of the liability of a local authority as bailees for reward, which arose out of the provision of facilities closely akin to those of a cold-air store, was discussed in *Economic Stores (Ilkifax) v. Ilkifax Corp'n.* (1923), 87 J. P. 77; 33 Digest 223, 550.

(*p*) *Ibid.*, s. 71 (2) (3).

(*q*) 26 Halsbury's Statutes 437.

(*r*) 11 Halsbury's Statutes 467.

(*s*) 10 Halsbury's Statutes 797, 798.

under the Fairs Acts, 1871 and 1873 (*t*), with a view to the abolition of the fair, or an alteration of the days for holding it. In both Acts the term "owner" means any person or persons, or body of commissioners, or body corporate, entitled to hold any fair; whether in respect of the ownership of any lands or tenements, or under any charter, letters patent or otherwise howsoever.

By sect. 3 of the Fairs Act, 1871, the Home Secretary, if it appears to him, upon a representation duly made either by the borough or district council, or by the owner of the fair, that it would be for the convenience and advantage of the public that the fair should be abolished, has power to make an order for its abolition. But he cannot make such order without the previous consent in writing of the owner for the time being of the fair, or of the tolls or dues payable in respect of it. By sect. 6 of the Fairs Act, 1873 (*u*), the Home Secretary, if it appears to him, upon a representation duly made to him either by the borough or district council, or by the owner of the fair, that it would be for the convenience or advantage of the public that the day or days for holding the fair should be altered, has power to order the alteration. The order may be either (1) that the fair be held in each year on some day or days other than that or those on which it is used to be held, or (2) that it be held in each year on the day or days on which it is used to be held, and also on any preceding or subsequent day or days, or (3) that it be held in each year on or during a less number of days than those on which it is used to be held.

Before a representation either for abolition or alteration of days is considered notice of the representation, and of the time when the Secretary of State will take it into consideration, must be duly given and published. If the representation has been made by the council, notice must be given to the owner of the fair, or if the representation has been made by the owner of the fair, notice must be given to the clerk of the council. In any case the notice must also be published once in the *London Gazette* and in three successive weeks in some one and the same newspaper published in the county, city or borough in which the fair is held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near to it. So soon as the order has been made, notice of it must be published in the *London Gazette* and in such newspaper as is mentioned above, and thereupon the fair is either abolished or can only be held on the day or days mentioned in the order. If the day be altered, the rights and privileges of the owner of the fair remain good, as if it were still held on the day or days upon which it was used to be held before the order. [821]

LONDON

Markets.—The principal wholesale markets in London are owned by the City of London corporation, whose powers in this respect are derived from a Charter of Edward III., dated 1327, which granted and confirmed to the citizens of London exclusive market rights and privileges within seven miles from the city. Notwithstanding this restriction, market charters were subsequently granted to other individuals and bodies by the Crown, in particular by Charles II., who was responsible for the bestowal of rights which led to the establishment or legal recognition among others of Covent Garden and

(t) 11 Halsbury's Statutes 470, 478.

(u) *Ibid.*, 478—479.

Spitalfields markets. By the City of London (Spitalfields Market) Act, 1902 (*a*), the corporation obtained powers to purchase the market and has acquired the freehold. There are other markets owned by local authorities, private owners and railway companies. The reports of the departmental committee on wholesale food markets in London appointed in November, 1919, by the Ministry of Food (*b*) supply much information of interest. [822]

The Hay and Straw Acts, 1796, 1834 and 1856 (*c*), make provisions as to the sale of hay and straw in the cities of London and Westminster or within thirty miles thereof. A register of sales, with certain exceptions, must be kept, provision is made for settling disputes as to weight, and penalties are imposed for short delivery and for non-compliance with the provisions of the Acts.

Secls. 50 to 52 of the L.C.C. (General Powers) Act, 1903 (*d*), empower metropolitan borough councils to provide accommodation, e.g. land or buildings, for retail street vendors and to borrow money for the purpose. Any moneys so borrowed must be repaid within ten years.

For provisions extinguishing certain market rights in the borough of Stepney, see L.C.C. (General Powers) Act, 1927, Part II. (*e*).

Seet. 19 of the London Government Act, 1899 (*f*), contains a saving for the exercise by the Woolwich Borough Council of previously existing powers of carrying on a market. Woolwich Market is carried on under Letters Patent granted in 1619, and seet. 2 of the London (Woolwich) Scheme, 1900, made under the Act of 1899 provides that for the purpose of enabling the Woolwich borough council to exercise their power of carrying on a market, sects. 166, 167 of the P.H.A., 1875 (*g*), should continue to apply to the Parish of Woolwich, though situate in London. The powers conferred by the Letters Patent of 1619 and the scheme of 1900 were by seet. 4 of the Woolwich Borough Council Act, 1903 (*h*), extended to the whole borough of Woolwich.

For powers as to the regulation of street trading, see title STREET TRADING. [823]

Fairs.—Seets. 38 to 40 of the Metropolitan Police Act, 1889 (*i*), prohibit the holding of fairs within the metropolitan police district between 11 p.m. and 6 a.m. and make provision for inquiry by a magistrate as to the lawfulness of fairs held in the district. The Metropolitan Fairs Act, 1868 (*k*), allows the Commissioner of Police to summon before a magistrate the owner or occupier of ground within the police district on which a fair is being or is proposed to be held, to show his right and title to hold the fair.

The Fairs Acts, 1871 and 1873 (*l*), extend to London, but the power of the justices to make representations to the Home Secretary was not transferred in London by seet. 27 of the L.G.A., 1894 (*m*); see seet. 35 of that Act. [824]

(a) 2 Edw. 7, c. clxv.

(c) 11 Halsbury's Statutes 829, 880, 961.

(e) 17 & 18 Geo. 5, c. xxii.

(g) 13 Halsbury's Statutes 694, 695.

(i) 11 Halsbury's Statutes 450—452.

(l) See *ante*, pp. 363, 364.

(b) Cmd. 634, 713, 1168, 1341.

(d) *Ibid.*, 1251, 1252.

(f) 11 Halsbury's Statutes 1236.

(h) 3 Edw. 7, c. clxxvii.

(k) *Ibid.*, 469.

(m) 10 Halsbury's Statutes 797.

MARKING OF AGRICULTURAL AND HORTICULTURAL PRODUCE

The Agricultural Produce (Grading and Marking) Acts, 1928 and 1931 (a), provide for the use of grade designations and grade designation marks in connection with sales of produce to which those statutes apply. Under sect. 1 (1) of the Act of 1928 the Minister of Agriculture may by regulations prescribe designations to indicate the quality of such produce, and the regulations must contain a definition of the quality indicated by each grade designation. On the sale of an article to which a grade designation is applied, it is a statutory term of the contract of sale that the quality of the article sold accords with the statutory definition (sect. 1 (2)). A grade designation is deemed to be applied to an article if it is used by or on behalf of the vendor, when the article is sold or delivered, or exposed or offered for sale, in any manner calculated to lead to the belief that the quality of the article accords with the statutory definition (sect. 1 (3)).

Grade designations are dealt with in sect. 2 (1) of the Act of 1928 enabling the Minister to prescribe marks to represent any grade designation, and to empower any person, or body of persons, to authorise the marking of articles with grade designation marks: such authorisation may be subject to conditions, including conditions as to the payment of expenses in connection with the preparation and manufacture of marks or labels (Act of 1931, sect. 3). The use of a prescribed mark in connection with the sale, delivery or exposure or offering for sale of an article, implies the use, for the purpose of the transaction, of the appropriate grade designation, and therefore the incorporation in the contract of the statutory definition (Act of 1928, sect. 2 (2)).

Sect. 1 of the Act of 1931 extends the provisions of the Act of 1928 to fishery produce, and by sect. 2 extends sect. 7 of the Act of 1928 so that "agricultural produce" and "fishery produce" include respectively all produce of agriculture or horticulture and of the fishing industry, all articles of food or drink wholly or partly manufactured or derived from any such produce, and fleeces and skins of animals.

The Agricultural Produce (Grading and Marking) (General) Regulations, 1928 (b), established a National Mark Committee for the authorisation of the use of prescribed grade designation marks. The grade designations (including statutory definitions) and grade designation marks for specific products are prescribed by separate S.R. & O. (c). The prescribed mark invariably incorporates the design known as the

(a) 1 Halsbury's Statutes 165; 24 Halsbury's Statutes 8.

(b) S.R. & O., 1928, No. 674.

(c) These Orders are very numerous, are frequently revised and are therefore not listed here. A list of those in force on January 1, 1935, appears in Supplement No. 4 to Halsbury's Statutes on pp. 1, 2 of the addition to Vol. 24. See also list on p. 12 of the Index to S.R. & O. of June, 1933.

National Mark, consisting of a Union Jack superimposed on a map of England and Wales (or of Scotland), with the words "Empire buying begins at home." The regulations under the Acts of 1928 and 1931 apply only to home-produced articles; for the marking of imported agricultural produce, see the Merchandise Marks Act, 1926, and the Orders in Council made thereunder, and the titles FRUIT; IMPORTED FOOD; and p. 210 of Vol. I. [825]

As to the marking of preserved eggs under sect. 3 of the Act of 1928 and the regulation under sect. 4 of the cold storage or chemical storage of eggs, see the title EGGS.

The duty of enforcing the provisions of the Acts of 1928 and 1931 is imposed by sect. 5 of the Act of 1928 on the councils of counties and county boroughs, as regards their respective areas, and these councils are under an obligation to appoint such officers as may be necessary (*d*). The expenses of county councils are defrayed as expenses for general county purposes.

It will be observed that failure to comply with the statutory definition does not give rise to criminal proceedings, but that the purchaser may have a civil remedy in respect of breach of contract. In practice the supervision of quality is undertaken by the M. of A., and apart from duties in relation to eggs (*e*), the duties of local authorities are confined to the detection and prosecution of offences relating to grade designation marks. Sect. 9 of the Act of 1928 enacts, however, that the provisions of the Grading and Marking Acts are additional to and not in derogation of any other enactment relating to or affecting merchandise marks or the sale of any article to which the Acts of 1928 and 1931 apply, and in suitable cases proceedings could therefore be taken under *e.g.* the Sale of Food (Weights and Measures) Act, 1926, or under the Food and Drugs (Adulteration) Act, 1928. See titles FOOD AND DRUGS; WEIGHTS AND MEASURES. [826]

The offences with which local authorities are concerned are:

(1) Forgery of a grade designation mark, or making, disposing of or having in possession any die, etc., for the purpose of forging such a mark, or using in connection with any article whatsoever (*f*) any mark of such a character, or in such a manner as to be calculated, by reason of the resemblance of that mark to a grade designation mark, to deceive (*g*). Unless the defendant proves that he acted without intent to deceive, he is liable on summary conviction to imprisonment not exceeding three months or to a fine not exceeding £20; on conviction on indictment the penalty is imprisonment not exceeding two years and/or a fine.

(2) Marking any article, covering or label with a grade designation mark unless authorised to do so by or under regulations; penalty on summary conviction, a fine not exceeding £20 (Act of 1928, sect. 2 (4)).

(3) Using in connection with any article whatsoever, any mark or description of such a character or in such a manner as to be calculated, by reason of the resemblance of that mark or description to a grade designation mark or prescribed part thereof, or by using in the mark or description the words "national mark," or other words calculated

(*d*) The usual practice is to appoint officers who have other duties in relation to foods and shops, such as inspectors of weights and measures.

(*e*) See title EGGS.

(*f*) *I.e.* any article whether or not it is the subject of regulations prescribing a grade designation mark.

(*g*) Act of 1928, s. 2 (3), as amended by Act of 1931, s. 4 (2).

to lead to a false belief that the article is one of a class to which grade designations have been applied under the Act of 1928; penalty on summary conviction, imprisonment for not exceeding three months or a fine not exceeding £20, or, on conviction on indictment, imprisonment for not exceeding two years and/or a fine (Act of 1931, sect. 4 (1)).

Proof by the defendant that a mark was used, or was registered under the Trade Marks Acts, 1905 to 1919, before June 17, 1931, or was used in connection with any article before the prescription of a similar statutory grade designation mark, is a defence to proceedings under sect. 4 (1) of the Act of 1931 so far as relates to user in connection with similar articles. Proceedings under sect. 4 (1) can be taken only by or with the consent of the M. of A. or by a council whose duty it is to enforce the Acts or by an officer appointed by the Minister or by a council and authorised generally or specially to prosecute. As to authorisation to prosecute, see sect. 277 of the L.G.A., 1933 (h). [827]

London.—The Agricultural Produce (Grading and Marking) Acts, 1928 and 1931, extend to London. Sect. 5 of the Act of 1928 (i) provides that the Common Council of the City and the metropolitan borough councils are to be the local authorities in London. [828]

(h) 26 Halsbury's Statutes 432.

(i) 1 Halsbury's Statutes 168.

MARRIAGES, NOTIFICATION OF

See NOTIFICATION OF BIRTHS AND MARRIAGES.

MARRIAGES, REGISTRAR OF

See REGISTRAR OF BIRTHS, DEATHS AND MARRIAGES.

MASSAGE

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Introductory.—A power to control massage establishments is not conferred on local authorities by any public statute, but some county or county borough councils have obtained powers of control by means of a local Act. The latest of these is the Hertfordshire County Council

Act, 1935 (a), others being the Manchester Corporation Act, 1924 (b), the Surrey County Council Act, 1931 (c), the Essex County Council Act, 1933 (d), the Wimbledon Corporation Act, 1933 (e), the Salford Corporation Act, 1933 (f), and the Middlesex County Council Act, 1934 (g). Except on certain subsidiary points, the Acts closely follow one pattern, and the following summary of the Hertfordshire Act will largely cover the other Acts. The term "establishment for massage or special treatment" is defined in sect. 47 as "any premises in the county used or represented as being or intended to be used for the reception or treatment of persons requiring (1) massage, or (2) electric or radiant heat treatment, light, vapour or other baths for therapeutic treatment, or (3) other similar treatment." There is a saving, however, in sect. 60 for establishments for massage or special treatment in which face or scalp massage merely is being administered. In the Middlesex Act, the council of any non-county borough or urban district may under sect. 64 pass a resolution declaring Part VII. of the Act to be in force in their area. But in Hertfordshire and Surrey, a resolution declaring the massage provisions to be in force in any non-county borough or district is to be passed by the county council, and the same applies to Essex, though under sect. 69 of the Essex Act the borough councils of Barking, Ilford, Leyton and Walthamstow may request that the power of executing Part IV. of the Act shall be delegated to the borough council. [§20]

Licensing.—By sect. 49 of the Hertfordshire Act no person, in a borough or district for which a resolution has been passed by the county council, is to carry on an establishment for massage or special treatment without a licence from the county council. Application for such a licence must be made to the county council with details as to name, address and technical qualifications, whether the business is carried on by a private person or company and whether the applicants are interested in any other business of the same kind (sect. 50). Applications relating to existing establishments must be sent in within two months after the advertisement of the resolution declaring the provisions to be in force. The cost of the licence is by sect. 50 (4) fixed as not exceeding two guineas for a first application and one guinea for a renewal, which must be annual. The fees may be retained by the council whether or not the licence is granted or renewed. The county council must either grant or refuse the application as soon as is reasonably practicable, and they may attach conditions for securing the proper conduct of the establishment (sect. 5). They may revoke a licence at any time. Reasons for refusal or revocation indicated in sect. 51 (1) are (i.) that the applicant is under twenty-one years of age, (ii.) that he or the premises are unsuitable, (iii.) that massage or special treatment will not be administered by a person with the necessary technical qualifications, and (iv.) that the establishment is or has been improperly conducted. Upon a proposal to refuse or revoke a licence, notice in writing with the grounds of objection must be given, and the applicant or licence holder must be given an opportunity

- (a) 25 & 26 Geo. 5, c. cxviii., Part IV.
- (b) 14 & 15 Geo. 5, c. xcv., Part IX.
- (c) 21 & 22 Geo. 5, c. ci., Part IV.
- (d) 23 & 24 Geo. 5, c. xlv., Part IV.
- (e) 23 & 24 Geo. 5, c. lxxvii., Part III.
- (f) 23 & 24 Geo. 5, c. lxxxix., Part VIII.
- (g) 24 & 25 Geo. 5, c. lxxxix., Part VII.

of being heard if he requests to be heard. Any person aggrieved by the attachment of conditions, or a refusal of the county council to grant or renew a licence, or by the revocation of a licence may within fourteen days appeal under sect. 51 (5) to a court of summary jurisdiction, and from there to the next practicable court of quarter sessions (sect. 143). [830]

Bye-Laws.—Bye-laws may be made by the county council under sect. 52, and after confirmation by the Home Secretary, must be exhibited in a suitable place on the premises. These may prescribe (i.) the books, cards and forms to be kept and the entries to be made in them, (ii.) the technical qualifications necessary for the administration of massage or special treatment, and (iii.) the prevention of fraud or immorality. Bye-laws may also regulate the premises generally. Officials of the council are given by sect. 53 a power of entry and inspection, and there are penalties up to £5 and a daily penalty of £2 for contraventions of bye-laws, refusal to allow entry to the offices, or advertisement of an unlicensed establishment, and up to £50 and a daily penalty of £20 for carrying on an unlicensed establishment or giving false particulars in the application (sect. 54). Proceedings may be taken in the case of a company against individual directors and managers and against the secretary as well as or instead of against the company (sect. 55). [831]

Savings.—Certain establishments are exempted by sect. 60 from the need of a licence, such as hospitals and institutions maintained by local authorities or bodies incorporated by statute or royal charter, voluntary hospitals, registered nursing homes, and all establishments which are not carried on for gain or reward. By sects. 58, 59, establishments carried on by registered medical institutions or by members of the Chartered Society of Massage and Medical Gymnastics are also exempted. [831A]

Extensions to Other Establishments.—If the county council consider that premises to which the provisions of the Act do not apply are being advertised as being used for some legitimate business, but in fact are being used for immoral purposes, they may, with the approval of the Home Secretary, determine that all or any of the provisions of the Act and bye-laws as to massage establishments shall apply to the premises (sect. 61). [832]

London.—Provisions closely resembling those of the Hertfordshire Act referred to *ante*, will be found in Part IV. of the L.C.C. (General Powers) Act, 1920 (*h*), but take effect without adoption. The licensing authorities are the L.C.C., and in the City of London the corporation (*i*), and "establishment for massage or special treatment" is defined in sect. 8 of the Act of 1920 similarly to sect. 47 of the Hertfordshire Act, but establishments for manieure and chiropody are also included. Sect. 40 of the L.C.C. (General Powers) Act, 1926 (*k*), allows the licensing authority to retain fees paid on applications whether the application is successful or not. [833]

(h) 11 Halsbury's Statutes 1357.

(i) Act of 1920, s. 3; 11 Halsbury's Statutes 1334.

(k) 11 Halsbury's Statutes 1353.

MASTER OF THE WORKHOUSE

See PUBLIC ASSISTANCE INSTITUTION MASTER.

MATERNITY AND CHILD WELFARE

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See also titles :

BIRTH CONTROL ;	INFANTS, CHILDREN AND YOUNG PERSONS ;
CLINICS ;	MIDWIVES ;
EDUCATION SPECIAL SERVICES ;	PUBLIC ASSISTANCE ;
HEALTH VISITORS ;	PUBLIC HEALTH.
INFANT LIFE PROTECTION ;	

Definition.—Maternity and child welfare is an elastic term and covers any action taken by the central or the local authority or by voluntary agencies to improve the general welfare and the personal health of expectant, lying-in or nursing mothers, and of children under five years of age (a). The term thus embraces a wide field of social activities and includes within its scope a number of sub-heads which are more fully dealt with under other titles to which reference should be made. In order, however, to give a consecutive history of the development of the movement and its prescint ramifications it will be necessary in this title to mention briefly some of these activities. [834]

History of the Movement.—This social service is of relatively modern growth ; though during the latter half of the last century there was evidence of an increasing interest in the welfare of young children, as may be seen in the many Acts of Parliament passed which had as their object the protection of child wage-earners and the increased range of prohibition of child labour, or its stringent regulation.

(a) See e.g. s. 204 of the P.H.A., 1936 ; 29 Halsbury's Statutes.

First, in actual point of time, was the agitation for the protection of the foster-child which arose out of the revelations made at the trials of notorious "baby-farmers." The Infant Life Protection Society was formed in 1870, and it obtained sufficient public support to introduce the Infant Life Protection Bill in 1871. Although the Bill did not pass, a Select Committee of the House of Commons was appointed to consider the subject. This Committee made three outstanding recommendations, viz. (1) the compulsory registration of births and deaths; (2) the compulsory registration of all private houses habitually used as lying-in homes; and (3) the compulsory registration of all persons receiving into their charge for hire two or more infants under one year of age. Effect was given to the third recommendation by the first Infant Life Protection Act, 1872 (*b*), to the first recommendation by the Births and Deaths Registration Act, 1874 (*c*); but it was not until the passing of the Midwives and Maternity Homes Act, 1926 (*d*), that the registration of lying-in homes became compulsory.

Next came the movement for the State recognition of midwives, though as far back as 1616 Dr. Peter Chamberlain had petitioned James I. for measures to be introduced to regularise the instruction of midwives, and for their State certification. In 1813 the Society of Apothecaries had appealed to Parliament to provide for the training of midwives and the regulation of their practice; but it was not until the Obstetrical Society of London undertook an extensive investigation into child mortality (1867-1869) that the real movement for the State registration of midwives began. The Obstetrical Society gave effect to the recommendations of their own Committee and instituted an examination for midwives. They continually importuned the Government and in 1888 submitted a draft Midwives Registration Bill to the Government, which had the backing of the General Medical Council. Meanwhile, the Midwives Institute had been founded in 1881, and the first Midwives Bill was introduced into the House of Commons in 1890, but failed to pass, largely owing to the opposition of the medical profession. Other Bills were introduced in later years, and finally the Midwives Act, 1902 (*e*), received the Royal Assent on July 31, 1902. [835]

The Infant Welfare Movement began towards the end of the nineteenth century and owed its initiation to the concern engendered by the rising infant mortality rate and the consequent wastage of young lives, to the declining birth rate which began to be evident about 1871 and was steadily continuing, and to the fact that, though the general death rate was also declining, the death rate of babies under one year (Infant Mortality Rate) showed no corresponding diminution. Attention was first directed towards the mortality caused by epidemic diarrhoea by Longstaff (1880), Ballard (1887), and Newsholme (1899). The methods of feeding in the early months of life were also studied, and it was ascertained that, although epidemic diarrhoea which was very prevalent in the late summer months and caused a high mortality

(*b*) Superseded by Part. I. of the Children Act, 1908; 9 Halsbury's Statutes 795; and Part V. of the Children and Young Persons Act, 1932; 25 Halsbury's Statutes 232. Now replaced by ss. 206-220 of P.H.A., 1936.

(*c*) 15 Halsbury's Statutes 737.

(*d*) Superseded as to nursing homes by the Nursing Homes Registration Act, 1927; 11 Halsbury's Statutes 785; and now by ss. 187-190 of P.H.A., 1936.

(*e*) 11 Halsbury's Statutes 720.

was mainly a "dirt" disease, the attack against infant mortality could not concentrate wholly on sanitation, but must also be directed at improving personal hygiene and elevating the prevailing low standard of mothercraft. A few local authorities, following these pointers, issued leaflets on infant feeding and management, and supplied medicine free during the summer months. Some local authorities, notably the Manchester city council and the Bucks county council, had already appointed health visitors, but it was not until 1906 that the first infant consultation centres were opened in St. Marylebone and Glasgow, followed in 1907 by St. Paneras, Westminster, and a few other places. An impetus was given by the Notification of Births Act, 1907 (*f*), which enabled local authorities who adopted it to require the notification of a birth within thirty-six hours of its occurrence.

Abroad, Professor Pierre Baudin commenced the first Consultation de Nourrissons at the Charité Hospital, Paris, in 1892, and in the following year Dr. Gaston Variot opened a similar centre at Billeville Dispensary, Paris. The first *ad hoc* institution was opened in 1894 by Dr. Léon Dufour in Pécamp. These "Gouttes de Lait," as they were named, became rapidly established all over France and had as their object the systematic medical supervision of infant rearing, the encouragement of breast feeding, and the supply of sterilized milk for infants who could not be breast fed. This work attracted some attention in England where in 1899 somewhat similar methods were begun at St. Helens, Lancs.

The first international conference wholly devoted to Infant Welfare was held in Paris in 1905. Three local authorities in England sent delegates, viz. Battersea, Glasgow and Huddersfield. The following year a conference was held in London and was presided over by the President of the Local Government Board (Mr. John Burns). This was the first National Conference dealing with Infant Mortality. Once begun, the movement grew rapidly and a series of conferences were held both in England and on the Continent. The Great War did not cause any check to the movement, and it advanced and expanded, encouraged by substantial grants from the National Exchequer. The Board of Education was the first Government department to give grants in aid of child welfare when in 1908 it commenced grants to the St. Paneras School for Mothers, the name by which infant welfare centres were then known. By 1913, twenty-seven institutions of a similar kind were in receipt of grants. [836]

The Notification of Births (Extension) Act, 1915 (*g*), made the notification of births compulsory, and in July of the same year the Local Government Board issued a circular urging local authorities to make the fullest use of their powers for promoting maternity and child welfare. The Act of 1915 conferred upon county councils as well as sanitary authorities power to make arrangements for the care of expectant and nursing mothers and young children. The chief immediate progress was in the extension of health visiting and the establishment of infant welfare centres. A small beginning was also made in ante-natal supervision, and the scope of infant consultations was extended to embrace pre-school children. Ancillary schemes, such as the dental care of expectant and nursing mothers, the provision of hospital beds for complicated maternity cases and for the confinement

(*f*) 15 Halsbury's Statutes 765; repealed by the P.H.A., 1936. See now s. 203 of that Act.

(*g*) *Ibid.*, 767; repealed by the P.H.A., 1936. See now s. 203 of that Act.

of women whose home circumstances were unsatisfactory, were provided only by a few local authorities or voluntary agencies. Hospital accommodation was also provided by a few local authorities for infants suffering from malnutrition, and a commencement was made towards the care in homes of the children of widowed, deserted or unmarried women. But the chief credit for the rapid progress made was due to the energy and initiative of voluntary societies. A special voluntary effort known as The Children's Jewel Fund during the years 1917-1920 raised nearly £70,000 which was distributed among 164 infant welfare institutions.

On the official side, the passing of the Maternity and Child Welfare Act, 1918 (*h*), was a most important event. Sect. 2 required every authorised council to establish a maternity and child welfare committee, of whom not less than two members must be women, to which all matters relating to the exercise of the powers given should stand referred. Persons expert in the subjects dealt with who were not members of the council might be appointed to the committee, provided that they did not exceed one-third of the total membership of the committee. In the explanatory circular (*i*) on this Act the Local Government Board stated that they were prepared to assist, up to 50 per cent. of the approved net expenditure, schemes for the development and maintenance of maternity and child welfare services. The remainder of the cost was defrayed out of the local rates, or in the case of voluntary bodies by various public appeals for funds. With the passing of the L.G.A., 1929, the percentage grants, other than those for the training of midwives and health visitors, ceased (*k*) and were replaced by "the block grant" (*l*) allocated to each council. The responsibility for payment of grants hitherto made to voluntary associations directly by the M. of H., was also placed upon the local authorities carrying out maternity and child welfare schemes (*m*). Decentralisation was the object, and it was felt that the impetus to development provided by the percentage system was no longer needed as the service had become universally recognised as a public health measure. It is too soon to say which of the two methods, the percentage grant or the block grant, is likely to prove the more helpful. A large part of the legislation referred to above has been consolidated by Part VII. of the P.H.A., 1936. [837]

Welfare Authorities and their Powers.—Originally the Notification of Births Act, 1907 (*n*), could be adopted (1) by a county council for the whole county or for a borough or district therein (see sect. 2 (4)), or (2) by the council of a borough or district. When by sect. 1 of the Notification of Births (Extension) Act, 1915 (*o*), the Act of 1907 was put in force universally, it was to take effect, in any area for which it had not been adopted by the county council, as if it had been adopted by the borough or district council, subject, however, to a power of the M. of H. under sect. 2 (4) of the Act of 1907 to declare by order that the Act should take effect as if it had been adopted by the county council or the borough or district council instead

(*h*) 11 Halsbury's Statutes 742; repealed by the P.H.A., 1936.

(*i*) Printed on pp. 3548-3558 of Lumley's Public Health, 10th ed.

(*k*) See the Second Schedule; 10 Halsbury's Statutes 979.

(*l*) See title GENERAL EXCHEQUER GRANTS.

(*m*) L.G.A., 1929, s. 93; 10 Halsbury's Statutes 942.

(*n*) 15 Halsbury's Statutes 705.

(*o*) *Ibid.*, 707.

of the body by whom it had been adopted. By sect. 61 of L.G.A., 1929 (*p*), an order of this kind did not need to be based on an application made to the Minister. Sect. 200 of the P.H.A., 1936, casts the duty of carrying out Part VII. of the Act upon the "welfare authorities." These are defined in sect. 200 (1) as county borough councils and, in county districts, either the county council or the county district council, whichever was, immediately before the commencement of the P.H.A., 1936, the local authority for the purposes of the Notification of Births Acts, 1907 and 1915. By sect. 200 (2), the M. of H. may, on a representation made to him by an elementary education authority, declare by order that that authority shall be the welfare authority. The question whether a particular council are the local authority for the notification of births therefore depends on the position as respects the adoption of the Act of 1907 when the Act of 1915 came into operation, subject to any modification made by an order of the Minister.

Overlapping powers as to maternity and child welfare were possessed by local authorities (1) under sect. 2 (1) of the Notification of Births (Extension) Act, 1915 (*q*), and (2) under sect. 1 of the Maternity and Child Welfare Act, 1918 (*r*). In practice the supervisory powers of the Ministry prevented any duplication. [388]

The powers conferred by Part VII. of the Act of 1936 are powers of attending to the care or health of expectant and nursing mothers and of children under five years of age who have not already come under the local education authority and powers for the protection of children under nine years old without parents or separated from them.

A model scheme of infant welfare services was suggested in the Local Government Board's annual report for 1917-1918 (*s*). The principal powers and duties of maternity and child welfare committees were stated to be:

(1) The maintenance of a sufficient staff of health visitors to supervise expectant and nursing mothers, infants and children under five years of age, and to make special visits to children suffering from infectious disease, and to assist at infant welfare centres. The suggestion was made, that there should be at least one health visitor to each 400 births.

(2) The establishment of maternity and child welfare centres to include medical supervision and advice for expectant and nursing mothers and for children under five years of age; the treatment of minor ailments in pre-school children and the education of parents in the general hygiene of maternity and childhood.

Other features of the scheme were: (3) the provision of food and milk to expectant or nursing mothers and to infants and young children needing extra nourishment and in poor financial circumstances; (4) an adequate service of trained midwives, and adequate inspection of their work; (5) the payment of doctors when called in by certificated midwives to mother or child in case of necessity; (6) a service of nurses for illnesses of pregnancy and confinement, puerperal fever, ophthalmia neonatorum, measles, whooping cough, poliomyelitis and epidemic diarrhoea in young children; (7) provision of hospital accommodation for acute illnesses connected with pregnancy, confinement and infancy; (8) the provision of maternity home accommodation, and of homes for

(*p*) 10 Halsbury's Statutes 925; repealed by the P.H.A., 1936.

(*q*) 15 Halsbury's Statutes 707.

(*r*) 11 Halsbury's Statutes 742.

(*s*) Cmd. 9157. See p. 15.

infants suffering from malnutrition, or other conditions which are not usually admitted to hospitals; (9) the provision of convalescent homes for women after confinement and for infants and young children and rest homes for expectant mothers if the need arose; (10) the provision of accommodation in homes or otherwise for attending to the health of children of widowed, deserted or unmarried mothers; (11) the provision of day nurseries, crèches or other means of looking after children of women who have to go out to work; and (12) the provision of home helps (i) for taking care of the home during the period of the mother's confinement.

This scheme is still the basis of maternity and child welfare expansion, and although there is a steadily increasing number of local authorities who have made provision for the majority, or all of the recommendations, the number of schemes which actually fulfil all the desiderata indicated is still small. Local authorities do not usually establish services for all the branches of work, but for many of them enter into arrangements with voluntary agencies and hospitals. [839]

As an illustration of the rapidity of the growth of the movement, in 1916 there were about 300 municipal and 400 voluntary infant welfare centres; by the end of 1934 the M. of H. reported the existence in England and Wales of 2,091 welfare centres controlled by local authorities and 793 by voluntary committees, with an attendance of some 317,000 individual children under school age per annum (u).

In addition to the services set out, some local authorities also provide (i.) consultant services for doctors needing assistance in difficulties or complications arising during pregnancy, or at, or after, confinement; (ii.) sterilised maternity outfits for patients confined at home for whom the doctor or certified midwife considers the provision desirable.

The rendering of these services is optional, but there is a considerable body of opinion which holds that, if further progress in the reduction of maternal mortality, neo-natal mortality and ill health among pre-school children is to be made, provision of this kind should be made compulsory. [840]

Health Visiting.—This subject is more fully dealt with elsewhere (a), but a summary of its history is necessary here to preserve continuity in description.

Health visiting as an organised activity first came into operation in 1862, being commenced by the Ladies' Sanitary Reform Association of Manchester and Salford. At first the visitors were voluntary, but it was soon found that the work needed salaried visitors. In 1890, the visitors in Manchester were placed under the direction of the M.O.H. Towards the end of the century, a number of local authorities had begun to appoint women sanitary inspectors, a part of whose duties was health visiting. In order to obtain particulars of births so as to secure that the mothers should be visited, arrangements were made with local registrars, lying-in hospitals, and midwives. This method led to delay and was not satisfactory, and Huddersfield in 1906 secured a clause in their Corporation Act requiring the notification of births to the M.O.H. The adoptive Notification of Births Act followed in 1907.

(i) See *post*, p. 381

(u) Annual Report of M. of H. for 1934-35 (Cmd. 4928), p. 291.

(a) See title HEALTH VISITORS.

The L.C.C. in sect. 6 of their General Powers Act of 1908 (*b*) took the first step towards establishing a standard of training for health visitors. Health visitors up to this time did not require any special training or qualification and were frequently of much the same educational standard as the mothers whom they visited. By sect. 59 of L.G.A., 1929 (*c*), a general power of prescribing the qualification of health visitors was given and by the Local Government (Qualifications of Medical Officers and Health Visitors) Regulations, 1930 (*d*), any health visitor appointed must hold the health visitor's certificate of the Royal Sanitary Institute or a diploma of the same body, or a qualification obtained in Scotland (*e*). The Minister's general power of prescribing qualifications for health visitors is now conferred by sect. 204 (2) of the P.H.A., 1936. [841]

Maternity and Child Welfare Centres.—The history of the foundation of infant centres has already been given. From the first the centre was closely associated with home visiting and time has shown that the latter is essential for the efficient operation of a centre. By this means only can it be ascertained that advice given at the centre is carried out in the home; also home visiting emphasises to the mothers the need for regular attendance at the centre.

At first the centre activities were concentrated on children under one year of age, but a gradual expansion took place until at the present time in most centres, children under five and not attending school, as well as expectant and nursing mothers are included. In addition, minor ailments are attended to, and periodic dental advice and attention given. Some authorities have arrangements in operation whereby, on the advice of the doctor attending the centre, convalescent treatment, remedial exercises, the removal of enlarged tonsils and adenoids and ultra-violet light treatment can be obtained.

Perhaps one of the most interesting and valuable of the recent developments in child welfare is the increasing provision made by local authorities for orthopaedic treatment of young children. This interest has been largely brought about by the work of a voluntary association—the Central Council for the Care of Cripples (*f*). [842]

The functions of an infant welfare centre are mainly to supervise the health of the baby and to instruct mothers in mothercraft. Treatment of sick children is not one of the functions. The aim is to keep babies well. Consequently only minor treatment is given; more serious illnesses being referred to the parents' private doctor or to a hospital. To this end the usual practice is for the baby to be weighed on each visit, and the mother interviewed by the health visitor, and if the visitor considers it necessary, she refers the mother to the doctor in attendance for further advice. As ancillary aids, foods are usually supplied on the doctor's recommendation at or under cost price, or if financial stress exists, free. These foods comprise various brands of dried milk, Virol, cod liver oil, etc. Wet milk is also supplied through the mother's own milk retailer at reduced prices, the balance being paid by the local authority or voluntary association. At some centres babies' clothing is sold and the mothers are also taught how to knit

(b) 11 Halsbury's Statutes 1206.

(c) 10 Halsbury's Statutes 924; repealed by the P.H.A., 1936.

(d) S.R. & O., 1930, No. 69 (printed at p. 3624 of Lumley's Public Health, 10th ed.), amended by S.R. & O., 1930, No. 408.

(e) See Vol. VI., p. 329, for a more detailed description of the qualifications.

(f) 84 Eccleston Square, S.W.1, and see *post*, p. 390.

and are given patterns of baby garments. Talks are from time to time given to mothers, and there are also periodic visits of a dentist who is usually on the staff of the local authority.

Many of the centres maintained by local authorities are staffed largely by voluntary helpers, but the skilled professional officers are members of the authority's public health staff. This combination of municipal and voluntary effort is a characteristic feature of the maternity and child welfare movement in this country. It helps to maintain a sociable atmosphere; and in many instances the provision of a summer outing, of holidays for tired working-class mothers, or the organisation of competitions, is left in the hands of volunteers. The M. of H. has, from time to time, indicated that the cardinal function of these centres is not the giving of treatment, nor even the giving of assistance by means of foods, etc., but that they are centres of instruction intended to assist mothers in maintaining the health of their babies and young children, rather than the treatment of sick babies.

About 60 per cent. of the total number of live babies, whose births were notified during 1934, attended an infant welfare centre at least once during the year. The spread and development of infant welfare centres during the past quarter of a century may be ascribed largely to the work of the Association of Maternity and Child Welfare Centres (g), a voluntary body which acts as a central intelligence office for the collection and distribution of information upon the subject. [843]

Education in Parentcraft.—The education of the mother in the care of her own health and that of her children has always been recognised as of greater importance than the prescribing of the correct food for each child. This aim is reflected in the original name of infant welfare centres; they were called "Schools for Mothers," but this title was not a popular one and was replaced by the present name.

Of late years a companion movement has been gaining impetus. It has been remembered that fathers are parents, as well as mothers, and that uninformed opposition to advice not seldom emanates from the father. This has led to the formation of "Fathers' Councils" within the maternity and child welfare centre itself; the object being to interest fathers in general public health work and in child welfare in particular.

In some districts girls before leaving school receive some instruction in infant care through the domestic science teachers. More, however, could be done on these lines than is at present attempted. [844]

Ante-Natal Care.—The initiation of this feature of maternity and child welfare was largely due to the labours of Dr. J. W. Ballantyne, of Edinburgh, who taught that if maternal mortality and maternal morbidity were to be reduced, adequate steps must be taken to safeguard the mother's health throughout the period of her pregnancy. The first accommodation for ante-natal care was made at the Edinburgh Royal Infirmary in 1901, and in 1913 the hospital undertook the home-visiting of expectant mothers by trained nurses. An *ad hoc* clinic was established in 1915, and this was handed over to the Edinburgh Health Committee in 1917. The movement led to a general opinion that the reduction of infant mortality, which had been the chief aim

(g) 117 Piccadilly, W.1, and see *post*, p. 390.

heretofore, was in actual fact only a part of the much wider problem embracing the protection of both the expectant mother and the unborn child, and this principle becoming recognised, led to a rapid development in the number of ante-natal clinics conducted, either by hospital authorities as a part of their maternity work, or by local authorities.

The objects of ante-natal care as laid down by Ballantyne were briefly as follows, namely, to ensure that the period of pregnancy shall be free from adverse influences and result in the safe delivery of a healthy child to a healthy mother; to ascertain whether the mother was suffering from any conditions that would be likely to give rise to difficulty or danger in childbirth; to ascertain if the mother had any signs of toxæmia or of other illnesses that are often associated with pregnancy; to provide suitable means of treatment if the need arose; to instruct the mother in the hygiene of pregnancy and in the preparations necessary for child-birth and in the nursing and care of the new born baby; and to provide means, if necessary, for the mother to be removed from an unsuitable home environment to more favourable surroundings.

Ante-natal clinics definitely made their appearance as a part of the official policy on maternity and child welfare in the memo. issued by the Local Government Board in 1914. Although at this time local authorities had not established such clinics, some ante-natal work was being done by several of the voluntary hospitals in their out-patients' departments; and home visits were made by the almoner's staff or by arrangement with voluntary health visiting organisations. A commencement was made in the following year by the National League for Health who established six experimental clinics near the Royal Free Hospital. From this date rapid progress was made, and by the end of 1934 there were 1896 ante-natal clinics in operation, the majority of which were conducted by local authorities. Although mothers have been slow to take advantage of these clinics, possibly because the support of midwives and of general practitioners has not always been forthcoming, there is a steady increase in numbers. During 1934 over 240,000 women attended at these clinics in England, representing over 48 per cent. of the total live births notified (*h*).

Para. 7 of the Local Government (Qualifications of Medical Officers and Health Visitors) Regulations, 1930 (*i*), requires a medical officer of an ante-natal clinic, on a first appointment, to have had at least three years' experience in the practice of his profession and special experience of practical midwifery and ante-natal work. [845]

Medical education in midwifery has been steadily improving. In 1932 the General Medical Council altered and expanded this part of medical training, involving an increase in the time given to midwifery and especially to residence in a maternity hospital. Twenty personal deliveries have to be performed and followed up, and there must be sufficient experience of ante-natal and post-natal work, the teaching to be done by senior teachers.

The nature of the supervision that should be exercised by an ante-natal clinic has been laid down recently in the report on ante-natal clinics prepared by the Maternal Mortality Committee of the M. of H., in June, 1929. The committee recommended that patients should first attend at the sixteenth week of pregnancy unless there have been

(*h*) Annual Report of M. of H. for 1934-35 (Cmd. 4678), see pp. 127, 291.

(*i*) See *ante*, p. 377.

indications at a previous confinement that earlier attendance is advisable. At the first visit a full medical and obstetrical history should be taken and a physical examination made. The latter should include the taking of pelvic measurements, an examination of the urine and an estimation of the blood pressure. The breasts should be examined in all cases and if indicated a Wassermann reaction should be done. Vaginal examination should be made if there is a history of difficult or septic labours. At the examination, dental treatment should be arranged for if found to be required. This primary examination should be followed up by home inquiries by the nurse or health visitor, and the patient given an advice leaflet and advised generally on hygienic matters. From this time routine examinations should be made at the twenty-fourth and twenty-eighth weeks and from then every fortnight until the thirty-sixth week, and thence weekly until the confinement takes place. At these subsequent examinations the uterine height and girth should be recorded; the foetal heart sounds listened for; the urine tested; blood pressures taken weekly during the last month, and special regard paid to the action of the excretory organs.

As an ancillary, most local authorities operating ante-natal clinics have made provision for the supply of dinners to expectant mothers in needy circumstances who are certified by the doctor as malnourished; whilst some also provide convalescent facilities and means for obtaining clothing. Special ante-natal hospital beds are also provided by a number of local authorities.

Although the great majority of local authorities maintain *ad hoc* ante-natal clinics staffed by whole-time or part-time officers in their employ, some, notably the Cumberland and Gloucester county councils, conduct their ante-natal services through the medium of general practitioners. [846]

Post-Natal Care.—Facilities are provided by some local authorities for the medical and nursing supervision of mothers after their confinement, and for the correction of disabilities which may have arisen as a consequence of that event. The number of these clinics, and the concomitant hospital bed accommodation, is still, however, relatively small. Mothers have been slow in realising the necessity for a medical overhaul after confinement. Where established, these clinics—which to be of any material value must have hospital beds at their disposal—have done valuable work in lessening the morbidity incurred as a consequence of the non-correction of disabilities, many of an initially minor nature, brought about by confinement. [847]

Confinement.—The majority of mothers are confined at home and over 50 per cent. of all confinements are conducted by midwives. There are some 600 maternity institutions, of which about 500 are provided by local authorities, with a total number of beds approximating to 5,600 (j). There is evident a distinct tendency, especially in urban areas, for mothers to prefer to be delivered in an institution, possibly due to modern housing conditions and the inconveniences of a confinement in a flat or a small house, and also because of the difficulty in obtaining domestic help. Undoubtedly, some births are being attended by midwives alone, a feature which has an important bearing

(j) Annual Report of M. of H. for 1934-35 (Cmd. 4978), pp. 291, 292, 337, 338.

on the movement for a higher standard of training for midwives, and a correspondingly better standard of pay. In this connection the Incorporated Midwives Institute in their published suggestions for a national maternity scheme put forward a scheme of a panel of midwives to be set up by local authorities, for whose services payment should be made on a scale agreed between the Institute, the British Medical Association, and the local authorities.

The L.G.A., 1920, by transferring the guardians' hospitals to county and county borough councils made available for general use maternity wards which had provided for poor-law patients. The M. of H. has advised that local authorities should make institutional provision for all women whose homes are unfit for a confinement, and for all patients whose cases are, or are likely to be, complicated or abnormal. Having regard to all the circumstances, a wise policy would be to provide hospital beds for all women from unsuitable homes and for complicated cases, and for normal first confinements also to be received as far as practicable. Apart from first confinements, normal uncomplicated cases should be encouraged to remain at home, every effort being meanwhile made to raise the standard of domiciliary midwifery. Every woman should have a doctor to be available if necessary and should have competent maternity nursing and sufficient nourishment and comfort. [848]

Domiciliary Midwifery.—In a properly organised service, the woman having her baby at home should be able to call upon the services of a doctor, or a certified midwife, who must under the rules of the Central Midwives Board, call in a doctor if in difficulty. The doctor's fee is payable by the local authority under sect. 14 of the Midwives Act, 1918 (*k*), according to a scale fixed by the M. of H., but the authority can if they so desire, recover the fee from the patient or the person liable to maintain her. In practice, local authorities usually work on a sliding scale of incomes when considering the amount to be recovered. In order to remove any obstacle to a woman engaging a competent midwife, some local authorities pay the midwife's fee for necessitous patients, and in some instances also pay the midwife's fee where she does not attend the patient, owing to complications necessitating a removal to hospital. "Maternity outfits" are also provided by some local authorities, but they are not used as much as they might be (*l*). [849]

Home Helps.—A certain number of maternity and child welfare schemes, both voluntary and official, make provision for the supply of home helps. These are usually married women of good character and approved by the engaging authority, who continue with the household work and look after any children in the home while the mother is away in an institution for her confinement, or is incapacitated at home. They are in no sense midwives, and have nothing to do with the management of the case but act only as household helps. The mother is expected to contribute to the expense so far as the family finances permit. Home helps are paid direct by the authority engaging them, who also usually pay a small retaining fee. [850]

(*k*) 11 Halsbury's Statutes 747, and see circular of M. of H. "Fees of Doctors called in by Midwives" of December 1922.

(*l*) A new Midwives Act has lately been passed by Parliament. This will be dealt with in the title MIDWIVES.

Maternal Mortality.—This aspect of maternity and child welfare has been very prominently before the public and the medical and nursing profession during the past few years. In spite of all the measures already taken to safeguard the health of the mothers and their babies, the deaths of women as a direct result of a confinement have shown a tendency to rise. For example, in 1932, the total puerperal mortality per 1,000 live and still births was 4·04; in 1933, 4·32 and in 1934, 4·41 (*m*). Similar results have been recorded in the United States and in Canada.

On the other hand, some European countries, notably Scandinavia, Denmark and Holland, have a maternal mortality rate consistently lower than the British rate. A feature of these countries is the high standard of midwifery practice by doctors and midwives.

The registration of still births was made compulsory in 1927 (*mm*); a comparison of the maternal mortality rates based on live births only and on births inclusive of still births shows, however, that the relative variations in the two rates from year to year are not greatly affected.

[351]

Factors in the Maintenance of Maternal Mortality.—What is probably a strong factor in the maintenance of the maternal mortality rate is the decline in the birth rate leading to a higher proportion of first births. First births have been proved to be more dangerous to the mother than subsequent births up to the sixth. The proportion of first births has outweighed the proportion of the later and less dangerous pregnancies.

Some authorities ascribe the continuance of the high mortality to an increased accuracy in birth certification; others think that abortion has become more prevalent in recent years. If so this will tend to raise the maternal mortality rate. The present attitude of many women towards maternity and the common practice of some form of birth control may also play a part. Interference with the physiological functions of the reproductive organs may cause minor injury or sepsis which may affect adversely pregnancy and childbirth. Certain social states may act as contributory factors, and of these the chief are poverty and malnutrition which may have led to rickets in infancy or anaemia in adult life. Overwork is a factor which operates more in later pregnancies. Overcrowding does not seem to exert any noticeable influence, whilst unhygienic environment does not preclude a safe delivery, but undoubtedly increases the chances of sepsis. Undue maternal mortality is, however, by no means confined to the poorer classes. [352]

Official Investigations.—In 1915, the Local Government Board published an important report by Sir Arthur Newsholme on maternal mortality in relation to infant mortality which showed the wide variations in these mortalities in different parts of the country; the industrial towns in Yorkshire and Lancashire showing the highest rates. Generally the highest rates are found in sparsely populated rural areas or in highly industrialised districts. It showed also that the majority of deaths of mothers from child bearing were caused by puerperal fever, haemorrhage and convulsions, most of these conditions being considered to be well within the range of preventive medicine. The report went on to state that "there can be no reasonable doubt that the quality and availability of skilled assistance before, during

(*m*) Annual Report of M. of H. for 1934-35, p. 129.

(*mm*) Births and Deaths Registration Act, 1926, s. 7; 15 Halsbury's Statutes 770.

and after childbirth are probably the most important factors in determining the remarkable and serious differences in respect of mortality from childbearing." The report laid down the following lines of action :—

(1) The ascertainment of cases needing help by means of (i.) the provision of skilled assistance at maternity centres which is one of the best means for obtaining information ; (ii.) the notification of births which provides essential information ; (iii.) the more effective notification of puerperal fever and hospital provision for its treatment ; (iv.) the collection of statistics of hospital experience ; and (v.) the provision of pathological aids for diagnosis.

(2) Ante-natal work by means of consultations and clinics together with organised home visiting.

(3) A review of the position as to the distribution of midwives. Some areas showed a supply inadequate to the public needs.

(4) A review of the work of inspection of midwives.

The major recommendations of this early report have been given to show that as early as in 1915, definite lines of action had been advocated officially, only some of which, in the years intervening, have been put into partial practice.

Since this report a number of important monographs have been issued by the M. of H., notably *Maternal Mortality* (1924) and the *Protection of Motherhood* (1927) by Dame Janet Campbell. Indeed a great deal has been done to obviate the lack, on account of poverty, of the essentials needed to bring a woman safely through her confinement and restore her to normal health and with a healthy baby. Maternity benefit under the National Health Insurance Act made it possible for a woman to pay for a midwife, and by the Midwives Act, 1918, medical aid required by a midwife was provided free of cost to necessitous women.

In 1928, the M. of H. (Mr. Neville Chamberlain) appointed a Departmental Committee, with the Chief Medical Officer of the Ministry (Sir George Newman) as chairman, "to advise upon the application to maternal mortality and morbidity of the medical and surgical knowledge at present available and to inquire into the needs and direction of further research work." The Committee issued an interim report in June, 1930, and a final report in August, 1932. These reports are the most important contributions to the problem issued in recent years. A number of schemes for dealing with the matter on a national basis have also been put forward. The Royal Commission on National Health Insurance of 1926 considered the possibility of giving maternity benefit partly as a cash payment and partly in the form of a medical and nursing service. The British Medical Association (1929) put forward a somewhat similar scheme. The Departmental Committee on the Training and Employment of Midwives also referred to the desirability of providing maternity schemes of this kind based on the provision of a doctor and midwife for each patient, and these schemes were examined by the Maternal Mortality Committee who put forward proposals as to the nature of the services to be provided to make for the success of a national maternity service (n). More recently (April, 1935), the Joint Council of Midwifery have issued a report dealing with the subject mainly from the midwifery side, and the Midwives Act, 1936, has been passed (o).

(n) These are summarised, *post*, on p. 386.

(o) This will be dealt with in the title MIDWIVES.

In the United States of America the subject has also attracted much attention. In addition to the Report of the Committee formed by the Academy of Medicine of New York, other Committees were formed at the White House Conference in 1930 to investigate the problem. [853]

The Departmental Committee of 1928 caused an investigation to be made into the causes of maternal deaths and the interim report issued in 1930 is based upon the study of 2,000 particular cases of death. A further 3,800 cases were examined prior to the issue of the final report. The Committee concluded that the primary essential for the reduction of the high maternal mortality is sound midwifery before, during and after childbirth, and that this does not depend on administrative arrangements or the expenditure of public money. It was not suggested that all maternal deaths are preventable, but 48 per cent. of the deaths seemed to have been directly preventable. In these 48 per cent. the avoidable factors were placed into four groups: (1) absence of adequate ante-natal care, 17 per cent.; (2) errors of judgment in practice or treatment by doctors or midwives, 17 per cent.; (3) lack of reasonable facilities available for effective medical care, 5 per cent.; (4) negligence of the patient or her friends to adopt or carry out medical advice, 9 per cent.

Taking other factors also into consideration, the Committee felt that at least one-half of the deaths under review could have been prevented had due forethought been exercised by the expectant mother and her attendant, a reasonable degree of skill been brought to bear upon the management of the case, and adequate facilities for treatment been provided and utilised. It is interesting to note that from investigations on somewhat similar lines carried out by the New York Academy of Medicine (1931-1933) it was considered that 65.8 per cent. of the deaths should have been prevented.

On the clinical side the committee found that 37 per cent. of maternal deaths were due to sepsis (*p*), and the chief contributory causes were (i.) failure to carry out antiseptic technique in an adequate manner, (ii.) insufficient recognition of the danger of infection from the throats of attendants on the patient, (iii.) failure to send febrile cases to hospital early enough, (iv.) inadequate ante-natal anticipation of obstetrical difficulties and too great a tendency to intervene in normal cases, and (v.) the carrying out of difficult obstetric operations by persons whose training has been insufficient to fit them for the task. [854]

On the administrative side, the imperfections were felt to be (1) a serious lack of facilities for the training of students; (2) inadequate post-graduate facilities for doctors; (3) the scant encouragement given to young obstetricians and gynaecologists to establish themselves in non-teaching provincial centres; (4) the need for better instruction of midwives in ante-natal care and nursing methods, and the poor remuneration and insecurity of practising midwives; (5) the still extensive employment of handy women as maternity nurses; (6) too little ante-natal supervision by general practitioners and midwives and the often perfunctory nature of that carried out; (7) the conduct of ante-natal clinics by persons who are not practising obstetricians and a lack of co-ordination between them and those conducting the

(*p*) Puerperal pyrexia was made notifiable in October 1926 by regulations of the M. of H.; see S.R. & O., 1926, No. 972. Puerperal fever is defined as notifiable under s. 6 of the Infectious Disease (Notification) Act, 1889; 13 Halsbury's Statutes 811. The definition of "notifiable disease" in s. 343 (1) of the P.H.A., 1936, does not contain puerperal fever.

deliveries ; and (8) the lack of hospital beds for ante-natal abnormalities and for the admission of cases of sepsis at an early stage.

The Committee recommended a detailed scheme of antiseptic toilet, and the supply of a sufficient number of hospital beds for difficult cases, for the early admission of cases with puerperal infection, and for the treatment of toxæmias in their early stages, and for "warning hæmorrhage" cases. They advocated that midwives should be trained to make blood-pressure determinations, and that a doctor's midwifery equipment should include apparatus for intravenous injections, and that blood-transfusion services should be more generally organised. Where it appeared that further childbirth would endanger life, medical advice should be given as to the prevention of pregnancy. See title BIRTH CONTROL. [855]

With regard to the existing maternity services, their recommendations fall under five headings, viz. (1) the training of medical students to be more thorough, and owing to the shortage of available cases, they recommend that, to avoid the present wastage of cases in the instruction of pupil midwives who will not ultimately practise midwifery, the Central Midwives Board certificate should not be made a requisite for appointments in which midwifery experience is not essential; (2) that steps should be taken to increase the facilities for post-graduate instruction; (3) that means should be found for providing post-certificate experience before registration as a practising midwife; that "refresher" courses should be provided for midwives already in practice and special efforts made to encourage their attendance at these courses; and that handy-women should never be employed as maternity nurses; (4) that the care of patients during pregnancy should, whenever possible, be undertaken by the person who will be responsible for the delivery, and ante-natal clinics should have an intimate working connection with a hospital where maternity beds are available; measures should be taken to educate the public as to the need for ante-natal care; and (5) that with respect to maternity hospitals, cases of puerperal sepsis should not be treated on the premises unless there is available an entirely separate ward block with nursing and domestic staff for whom separate staff accommodation is provided. That new maternity accommodation should, whenever possible, be associated with general hospitals, and that the medical staffing should be such as to secure prompt specialist service.

In connection with the development of existing maternity services the essential services considered by the Committee as necessary to secure a higher standard of care for the mother during pregnancy, labour and the puerperium were: (i.) the provision in every case of the services of a registered midwife to act either as midwife or as maternity nurse; (ii.) the provision of a doctor to carry out ante-natal and post-natal examination in every case and to attend as may prove necessary during pregnancy, labour and the puerperium, all cases showing any abnormality; (iii.) the provision of a consultant, when desired by the attending doctor during pregnancy, labour and after childbirth, and of hospital beds for cases needing institutional care; and (iv.) the provision of certain ancillary services, dentistry, home helps, sterilised outfits and facilities for pathological investigation as desired by the doctor. [856]

Many local authorities provide some of the facilities enumerated above but relatively few provide all. A complete obstetrical scheme was laid down and has been operating in Croydon county borough

since 1929. Under this scheme all the facilities, in so far as the powers of the local authority extend, are provided, including the provision of a whole-time obstetrician who has the supervision of all cases attending the ante-natal clinics, and who has hospital beds for ante-natal, natal and post-natal cases at his disposal and under his supervision. He also acts as consultant to general practitioners in cases of financial stringency.

Recently, further suggestions emanating from the Maternal Mortality Committee, going beyond those contained in the above reports, have been proposed. The most important of these are that midwifery practice should be limited to doctors with post-graduate training and practice in obstetrics; that private practitioners so equipped should be encouraged to take part in local schemes; that the period of a midwife's training should be extended to two years; that there should be a salaried midwives' service working under the direction of a hospital, nursing association or local authority, and that there should be compulsory and confidential notification to the M.O.H. of the local supervising authority of all deaths occurring during pregnancy, and of all those following or associated with childbirth and abortion.

The appearance of the Scottish Report on Maternal Mortality and Morbidity in July, 1935, may be regarded as closing the phase of official inquiries begun in 1915. This report makes many similar recommendations to those of the English Departmental Committee, but it has some interesting additional recommendations. With respect to ante-natal care it suggests that local authorities should consider the institution of a voluntary system of notification. Midwives should be encouraged to notify the M.O.H. of all women who engage them and the same procedure should be followed by medical practitioners. Voluntary clinics should assist by reporting to the M.O.H. patients who default from ante-natal treatment. It should be considered whether it is practicable to make the obtaining of adequate ante-natal care an essential condition to the payment of maternity benefit. With regard to the lying-in period, the committee stress the adverse influence of hurried and meddlesome midwifery, and recommend that before anything more than minor instrumental or manipulative interference is attempted at any stage in labour, the advice of a recognised obstetrician should be obtained. They lay down as a general recommendation that the local authority should arrange for all executive functions connected with the maternity services within their area, so far as they come within the authority's province, to be under the direction of a single medical officer. [857]

The Unmarried Mother and her Child.—This is a difficult field of maternity and child welfare work. The illegitimate birth rate in 1934 per 1,000 of the population was 0·64. Calculated per 1,000 of single or widowed women of child-bearing age the rate was 5·25. The proportion of illegitimate births to 1,000 total live births was 43. The illegitimate birth rate has declined considerably during the past twenty-five years, a reflection possibly of the social and other causes which have contributed to the reduction of the general death rate. The mortality of illegitimate infants is, however, much higher than that of legitimate, whilst the maternal mortality among unmarried mothers is three times as high as that of married mothers. This greater mortality is largely caused by the increased incidence of sepsis, which may be brought

about by attempts at procuring abortion, and the efforts of the mother to conceal her condition.

Local authorities have power under sect. 204 of the P.H.A., 1936 (*g*), to make such arrangements as may be approved by the M. of H. for attending to the health of children under five years of age, and of expectant mothers and nursing mothers. Where maintenance in a home is necessary, most local authorities do not carry out this service directly, but arrange with a voluntary agency to do so. There are now upwards of 100 homes in the United Kingdom for unmarried mothers and for their children, and their work is recognised by grants paid on the same basis as those given to the child welfare centres. [858]

The National Council for the Unmarried Mother and her Child (*r*), a voluntary organisation, was formed in 1918 with the objects of (1) obtaining reform of the existing Bastardy Acts and Affiliation Acts; (2) of securing provision for adequate accommodation to meet the varying needs of mothers and babies throughout the country; and (8) of dealing with individual inquiries from, or on behalf of, unmarried mothers. This Council has exerted considerable influence in improving the provision for the care of the unmarried mother and her child.

There are at present two main schools of thought on the problem of how best to deal with the difficulties presented. One school holds that the mother should be relieved of her responsibilities as quickly as possible, so enabling her to make a new start—the child being a matter of secondary importance. This involves the early separation of mother and child and the transfer of the latter to the care of foster-parents. The other school holds that a child born in whatever circumstances has the right, not only to its natural nurture during infancy, but to its mother's affection and care. The latter policy gives the child an increased chance of a healthy constitution, whilst the best chance for the future of the mother is held to be in the love of her child. This principle was recognised in the circular of the Local Government Board dated August 9, 1918 (*s*), on the Maternity and Child Welfare Act, 1918; and the movement to provide homes and hostels where unmarried mothers can live, which began just before the war (*t*), was aided by the grants under the Act of 1918. The object of these hostels was to provide a good home for the unmarried mother and her baby, and to find work in the neighbourhood for the mother and to enable her to earn her own living. In late years, it has become increasingly difficult to get unmarried mothers to stay as long as desirable in these hostels.

In many cases the most satisfactory way of rehabilitating mother and child is by the legitimisation of the child through the marriage of the parents. This was made possible by the Legitimacy Act, 1926 (*u*), which legitimises a child if its parents marry, provided that neither was married to a third person when the child was born, and at the time of the marriage the father was domiciled in England or Wales. It is the duty of the parents to furnish, within three months of the

(*g*) Replacing s. 1 of the Maternity and Child Welfare Act, 1918.

(*r*) See title ASSOCIATIONS.

(*s*) Printed on pp. 3548—3558 of Lumley's Public Health, 10th ed. See pp. 3555—3556.

(*t*) The first hostel of this kind was opened in Chelsea in 1912.

(*u*) 2 Halsbury's Statutes 25.

marriage, the necessary particulars for the re-registration of the child's birth by the Registrar-General.

It was not until the Adoption of Children Act, 1926 (w), that legal provision was made in this country for the adoption of a child. Under this Act a person over twenty-five years of age may obtain an adoption order if he or she is at least twenty-one years older than the child and is resident and domiciled in England or Wales. The mother's rights and liabilities are thereby transferred to the adopting parents. Application for an order of adoption must be made to the Chancery Division, the county court or a juvenile court. [859]

The Pre-School Child.—The welfare of the pre-school child is a function of maternity and child welfare which lagged behind the movement concerned with the welfare of the infant. There has been, however, during the past quarter of a century, a big decline in the death rate in each of the first five years of life and this decline has been greater in the four later years than in the first. This feature is possibly due to improved standards of mother-care, and improvements in general sanitation. The major problem of this period of life is that of morbidity rather than of mortality.

Supervision of the pre-school child is mainly effected by health visitors and infant welfare centres. No active measures have as yet been provided for the general rectification of disabilities arising during this vital period of life, and much of the supervision, owing to the prior claims of infant visiting on numerically insufficient health visiting staffs, and the inability or reluctance of mothers to appreciate the importance of close supervision, is of a fragmentary character. Its inadequacy is reflected in the adverse findings at school medical inspection of entrants into the public elementary schools. See title EDUCATION SPECIAL SERVICES. [860]

The two main kinds of institutions which are concerned wholly with the "toddler" group of children are day nurseries and nursery schools.

The former institutions are for the care, during the day, of children under school age whose mothers are unable to look after them because they have to go out to work, and are actually of older origin than the infant welfare centres. In England, the first day nursery was established at Salford in 1883, but it was not until the early part of the twentieth century that day nurseries took their place as recognised agencies of maternity and child welfare. This recognition was largely due to the work of the National Society of Day Nurseries, founded in 1906; and in 1914 day nurseries were included in the activities in respect of which grants were payable. At first the grants were paid by the Board of Education, but in 1919 this function, together with supervision, was transferred to the newly formed M. of H. See title DAY NURSERIES.

There are about 150 day nurseries in the United Kingdom, the vast majority being run by voluntary organisations. They usually accommodate about forty children, and a small charge per day is made to the mother. These nurseries are useful in exerting skilled supervision and medical inspection during the most impressionable years of a child's life, and they are also of advantage as training centres for nurses at nurseries. Arrangements have been in force for some years to standardize this training. [861]

(w) 9 Halsbury's Statutes 827. See also title ADOPTION OF CHILDREN.

Nursery Schools.—This subject is dealt with more fully in the title EDUCATION SPECIAL SERVICES, but as it is an integral part of maternity and child welfare a brief account of the movement must be given here.

Nursery schools trace their development from the free kindergartens for poor children which were established by voluntary agencies in several large towns during the latter part of the last century. The object was to place the children in good surroundings and teach them good habits. Local education authorities were first authorised to supply or aid the supply of nursery schools by sect. 19 of the Education Act, 1918 (a).

The modern nursery school movement is due to Miss Margaret MacMillan, who opened a children's clinic at Bow in 1908 and another in Deptford in 1910, and with her sister Rachel began the Nursery School in Evelyn Street, Deptford. In 1914 the school was transferred to Stowage, and in 1921 the old buildings were replaced by new and enlarged ones. On Margaret MacMillan's death in 1931 the premises passed to the L.C.C. who have since maintained them.

The aims of a nursery school are to care for little children between two-and-a-half and five years of age in healthy surroundings; to train them in all matters of personal hygiene; and to inculcate self-reliance of character. The children are under close medical supervision and are kept at the school all day, having a meal on arrival, at midday, and before going home. The mothers are usually expected to make financial contributions weekly according to their means.

Nursery schools do not rank as public elementary schools within the meaning of the Education Acts, but since 1919 they have been recognised by the Board of Education as eligible for grants. There are at present about ninety recognised nursery schools in the United Kingdom most of which are maintained by voluntary agencies. There is a strong movement on foot to increase this number, a movement which is now backed by the Board of Education, though during the economic crisis 1930—1933 official encouragement was withheld. [862]

School Attendance of Children under Five Years.—Grants are payable by the Board of Education in respect of the attendance of children between the ages of three and five years at public elementary schools. The number of such children attending, however, has declined greatly in recent years owing to a change in the official policy since the passing of the Education Act, 1902. In 1905, the Board of Education informed local education authorities that they considered the attendance of children under five was a danger to the health of the children; and the Consultative Committee, reporting in 1918, stated that the ordinary school conditions were unsuitable but that nursery schools should be provided. [863]

Since the unemployment crisis, the "Save the Children Fund" has started emergency open-air nurseries in certain of the "depressed areas." Unemployed men have built and made the equipment for these nurseries which are most numerous in the north-eastern district of England. The first was opened in Middlesbrough in 1933. [864]

Infant Life Protection.—Since the passing of the L.G.A., 1929, the law with respect to infant life protection has been administered locally by maternity and child welfare authorities and centrally by the M. of H.

(a) Replaced by s. 21 of the Education Act, 1921; 7 Halsbury's Statutes 140.

Previously the work was carried out by the boards of guardians. The matter, however, is dealt with fully under the title **INFANT LIFE PROTECTION**. [865]

Convalescent Homes for Mothers and Young Children.—There are relatively few such institutions yet established. The most usual method is to board out mothers and/or their young children, in suitable and approved private homes at the seaside, or in country districts. Some voluntary convalescent homes accept these patients, whilst a very few local authorities provide their own. Altogether there are not more than 100 such homes in the United Kingdom with an approximate accommodation of some 2,500 beds. Such institutions are necessarily expensive to maintain and it is often difficult for working-class mothers to leave their homes, however great the need of rest during convalescence may be. [866]

Voluntary National Organisations.—Voluntary organisations have throughout played a very prominent part in the development of maternity and child welfare schemes. The chief of the existing organisations are centralised under the National Council for Maternity and Child Welfare with headquarters at 117 Piccadilly, London, W.1. The following societies have their offices here: The Association of Maternity and Child Welfare Centres; Institute of Infant Welfare Fund; Invalid Children's Aid Association; National Association for the Prevention of Infant Mortality; National Baby Week Council; National Council for the Unmarried Mother and her Child; National Society of Day Nurseries; and State Children's Association. The Central Council for the Care of Cripples has offices at 84 Eccleston Square, S.W.1.

The following National Societies which also form part of the National Council have offices elsewhere, viz.: The Child Guidance Council, Woburn House, Upper Woburn Place, W.C.1; Incorporated Midwives Institute, 57 Lower Belgrave Street, S.W.1; Mothercraft Training Society, Cromwell House, Highgate, N.6; Nursery School Association of Great Britain, 29 Tavistock Square, W.C.1; and the Save the Children Fund, 20 Gordon Square, W.C.1.

The central body, the National Council, maintain a lending and reference library on all matters connected with the movement, in addition to travelling and permanent child welfare exhibitions. [867]

London.—Maternity and child welfare are now dealt with in Part XII. of the P.H. (London) Act, 1936, and under sect. 250 the Common Council of the City and metropolitan borough councils are welfare authorities. Sect. 1 of the Maternity and Child Welfare Act, 1918 (b), is reproduced in sect. 251 of the Act of 1936.

Under sect. 55 of the P.H. (London) Act, 1891 (c), the Public Health (Notification of Puerperal Fever and Puerperal Pyrexia) Regulations, 1926 and 1928 (d), and the Public Health (Ophthalmia Neonatorum) Regulations, 1926 and 1928 (e), the City Corporation and the borough councils receive notifications of cases of puerperal fever, puerperal pyrexia and ophthalmia neonatorum. In connection with these

(b) 11 Halsbury's Statutes 742.

(c) *Ibid.*, 1059; replaced by s. 192 of P.H. (London) Act, 1936. See also title **INFECTIOUS DISEASES**.

(d) S.R. & O., 1926, No. 972; 1928, No. 420.

(e) S.R. & O., 1926, No. 971; 1928, No. 419.

notifications, they carry out the necessary investigations, arrange removal to hospital, disinfection of premises, etc., and can arrange for obstetric consultants and bacteriological examinations. [868]

Under the Maternity and Child Welfare Contributions (London) Schemes made by the M. of H. under sect. 101 (6) of the L.G.A., 1929 (f), the L.C.C. are responsible for the payment of grants to a large number of maternity and child welfare associations. Grants are also payable by certain metropolitan borough councils to other child welfare associations in their boroughs. The money for these grants is contained in the block grant payable by the M. of H. to the borough councils concerned. In deciding which authority shall pay the grant, the general principle has been adopted that the county council should be responsible for payments to institutions dealing with maternity work and the welfare of mothers, in certain cases including their babies, whereas the borough councils should be responsible for the grant to those institutions dealing more particularly with child welfare. [869]

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MATERNITY CLINICS

See CLINICS.

MATERNITY HOMES

See NURSING HOMES.

MATRON

See HOSPITAL STAFF; MENTAL HOSPITALS.

MAYOR

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The references in this title, except where otherwise specified, are to the sections of or schedules to the L.G.A., 1933 (a).

Scope of Article.—This article will deal with the election and eligibility for office of the mayor, together with his rights, powers and duties, and social and ceremonial position.

It may be said that the mayor is the personification of the civic unity of the town. To the duties devolving on him in this capacity he must devote a large part of his time, in addition to presiding over meetings of the council of the borough and his work as a magistrate. [871]

Election of Mayor.—Seet. 15 of the Municipal Corporations Act, 1882 (b), is repealed and replaced by seet. 18 of the L.G.A., 1933 (c), which provides that the mayor shall be elected annually by the council from among the aldermen and councillors, or from outside the council, but in that event he must be qualified to be an alderman or councillor. He must retain his qualification throughout his year of office. An outgoing alderman is eligible, but must not as alderman vote at the election (d). The ordinary election of mayor must be held at the annual meeting of the council on November 9 in each year, and the election must be the first business transacted at that meeting (e). If November

(a) 26 Halsbury's Statutes 205—541.

(b) 10 Halsbury's Statutes 581.

(c) 26 Halsbury's Statutes 313.

(d) S. 19 (2) ; 26 Halsbury's Statutes 315.

(e) S. 19 (1) ; *ibid.*, 315. No expenditure may be incurred by a candidate for the office of mayor, see s. 5 of Municipal Elections (Corrupt and Illegal Practices) Act, 1884 ; 7 Halsbury's Statutes 513. *Ex parte Gale* (1905), 69 J. P. 281 ; 20 Digest 147, 1225.

9 is a Sunday, or day appointed for public thanksgiving or mourning, the meeting is held on the following day (sect. 295).

The mayor cannot preside at the meeting of the council if he is a candidate for re-election (*f*), and as soon as he is nominated for re-election he should vacate the chair. The chair should then be filled by the deputy mayor (who continues in office until the newly-elected mayor becomes entitled to act (*g*)), if he is present and chosen for the purpose and not debarred, and if not, such alderman, or in the absence of all the aldermen, such councillor as the council may choose (*h*). But the retiring mayor though not in the chair, being still a member of the council, can give an original vote (*i*) if no salary be attached to the office (*k*). [872]

Acceptance of Office.—The office of mayor is included in the definition "corporate office" (*l*), and he must make the declaration of acceptance of office required by sect. 61 of the Act (*m*). If he fails to do so within two months from the day of his election then the office becomes vacant (*ibid.*). [873]

Term of Office.—The term of office of the mayor is one year, but he continues in office (unless he resigns or becomes disqualified) until his successor becomes entitled to act as mayor (*n*). Thus if the mayor who is a member of the council is defeated at the annual election held on November 1 and so ceases to be a councillor, he nevertheless remains mayor (and as such a member of the council) and entitled to preside (unless a candidate for the mayoralty) and may give an original and a casting vote at the election of his successor (*o*). [874]

Remuneration.—The council may pay to the mayor such remuneration as they may think reasonable (*p*), but this provision does not allow the payment of a merely colourable salary or colourable addition to the salary in order that it may be applied in indirectly making payments which could not be justified if made directly (*q*). The council may, however, make additions to the mayor's salary where it is expected that during his year of office his expenditure will be increased, for example, by reason of the celebration of a jubilee or other national festivities; but the resolution must be *bona fide* and under the resolution the mayor should have a full discretion as to expending the allowance (*r*). [875]

(*f*) See *R. v. White* (1867), L. R. 2 Q. B. 537; 33 Digest 65, 393, and *R. v. Owens* (1850), 2 E. & E. 86, at p. 91; 20 Digest 123, 994.

(*g*) S. 20; 20 Halsbury's Statutes 315. *R. v. Morton* (1802), 1 Q. B. 89; 20 Digest 188, 1129.

(*h*) Sched. III., Part II., r. 3; 26 Halsbury's Statutes 497. The retiring mayor though a candidate can remain in the chair during the election of a person to preside at the election of a mayor.

(*i*) S. 18 (2); 26 Halsbury's Statutes 314.

(*k*) S. 76; *ibid.*, 846; *Nell v. Longbottom*, [1894] 1 Q. B. 767; 88 Digest 66, 402; *R. v. Donovan* (1910), 44 Ir. L. T. 136.

(*l*) S. 305; 26 Halsbury's Statutes 406.

(*m*) 26 Halsbury's Statutes 337.

(*n*) S. 18 (2); 26 Halsbury's Statutes 314.

(*o*) Sched. III., Part V., r. 1 (2); 26 Halsbury's Statutes 500.

(*p*) S. 18 (4); 26 Halsbury's Statutes 314.

(*q*) *A.-G. v. Cardiff Corp.*, [1894] 2 Ch. 387; 33 Digest 86, 558.

(*r*) *A.-G. v. Blackburn Corp.* (1887), 57 L. T. 385; 88 Digest 85, 548. The purchase for the mayor of a gold chain out of the general rate fund is illegal. *A.-G. v. Bailey Corp.* (1872), 26 L. T. 392; 38 Digest 71, 464. An ex-mayor may be compelled by *mandamus* to deliver to his successor his insignia of office (*Ex parte Downton* (1850), 14 J. P. Jo. 319; 88 Digest 71, 453).

Disqualification.—The various disqualifications for being elected or being mayor are set out in sect. 59 of the Act (*s*) and are similar to those attaching to the office of borough councillor. See title **Borough COUNCILLOR**. Whilst the section does not refer to the mayor as such, a mayor, whether elected from inside or outside the council, would be a "member of a local authority" within the meaning of the section. The mayor would also vacate the office of mayor under sect. 63 (1) (*t*) if he should fail throughout a period of six consecutive months to attend a meeting of the council, unless the failure was due to some reason approved by the council (*u*). But under proviso (*a*) to the sub-section attendance as a member at a meeting of a committee or sub-committee of the council, or at a meeting of a joint committee, joint board or other body to which any of the functions of the council have been delegated or transferred, counts as attendance at a meeting of the council. For a fuller account of the effect of this section, see title **Borough COUNCILLOR**. The mayor will also cease to hold office if he is continuously absent from the borough, except in the case of illness, for a period exceeding two months (*a*). [876]

Casual Vacancy.—If a casual vacancy occurs in the office of mayor, an election to fill the vacancy must be held not later than the next ordinary meeting of the council, except that where such meeting is to be held within fourteen days from the occurrence of the vacancy, the election may be postponed until the following ordinary meeting (*b*). The procedure is the same as for an ordinary election of mayor (*b*). A meeting to elect a mayor to fill a casual vacancy may be convened by the town clerk (*c*). The person elected to fill the casual vacancy holds office until the person in whose place he is elected would have retired (*d*). [877]

Powers and Duties.—At every meeting of the council the mayor, if present, is to preside (*e*), but he should not do so if he is disqualified, by interest in the matter, from presiding (*ee*).

The mayor has power to call a meeting of the council at any time (*f*). If he refuses to call a meeting after a requisition for that purpose signed by five members or by one-fourth of the whole number of members of the council (whichever is the less) has been presented to him, or if without so refusing he does not within seven days after such requisition call a meeting, any five members or one-fourth of the members (whichever is the less) may thereupon call a meeting (*f*).

As chairman of any meeting of the council at which he is present, the mayor can give a second or a casting vote in case of equality of votes on any question (*g*). Thus, whether with or without his vote, the votes for and against a motion are equal, he may decide the question

(*s*) 26 Halsbury's Statutes 334.

(*t*) *Ibid.*, 338.

(*u*) The disqualification cannot be overcome by resuming attendance; see *R. v. Hulton* (1911), 75 J. P. 385; 33 Digest 12, 26.

(*a*) S. 63 (2); 26 Halsbury's Statutes 339. The mayor may resign office on giving notice under s. 62.

(*b*) S. 66 (1); *ibid.*, 341.

(*c*) S. 66 (2). If an election is not held within the time specified, see s. 72 (2).

(*d*) S. 68; 26 Halsbury's Statutes 343.

(*e*) Sched. III., Part II., r. 3; 26 Halsbury's Statutes 497.

(*ee*) As to disqualification from taking part, see s. 76; 26 Halsbury's Statutes 346.

(*f*) Sched. III., Part II., r. 2.

(*g*) Sched. III., Part V., r. 1 (2).

by his vote. The powers of the mayor as chairman of the council are further dealt with in the title MEETINGS. [878]

At an election of councillors for a borough not divided into wards the mayor (unless a candidate (*h*)) is returning officer. In the case of a borough divided into wards, this duty as regards each ward election falls on the alderman assigned for that purpose by the council at the annual meeting (*i*). The mayor is required as soon as may be after expiry of the time for delivery of nomination papers at a municipal election, to examine the papers and decide whether the nominations are valid or otherwise and notify the candidates of the decision (*k*). His decision that a nomination is valid is final, but a decision of invalidity is reversible upon a petition questioning the election (*k*). He is also to publish a statement in the prescribed form of persons nominated (*l*) and also to publish notice of poll with prescribed particulars in the case of a contest (*m*). Upon the mayor is also laid the responsibility of providing polling stations, with all accessories, and appointing the necessary officers and of doing such other things as may be necessary for the effective conduct of the election (*n*), but in practice this duty is performed by the town clerk. In case of the inability of the mayor to act for any reason (*e.g.* if he is a candidate) the deputy mayor is empowered to act in his place, and if he in turn cannot act, an alderman chosen by the council acts (*o*). Further, as to the duties of mayor at municipal elections, see title ELECTIONS, Vol. V., p. 240 *et seq.*

Under sect. 28 of the Representation of the People Act, 1918 (*p*), the mayor is the returning officer in the case of a parliamentary election for a parliamentary borough which is co-terminous with or wholly contained in one municipal borough, not being a county of a city or town having a sheriff. For the general law relating to parliamentary elections, see Halsbury's Laws of England (2nd ed.), Vol. XII., title "Elections." [879]

Save in those cases where the alternative method of district or professional audit is in force (*q*) the mayor appoints annually in March from amongst the borough councillors an auditor who in association with the two elective auditors elected by the local government electors, has the duty of auditing the accounts of the borough (*r*). See titles AUDIT, AUDITORS.

The mayor is *ex-officio* a member of the watch committee for the control of any police force of the borough by virtue of sect. 190 of the Municipal Corporations Act, 1882 (*s*). [880]

Mayor as Justice.—The mayor by virtue of his office is a justice of the peace for the borough, and unless he ceases to be qualified or

(*h*) *R. v. White* (1867), L. R. 2 Q. B. 557; 20 Digest 123, 995; *R. v. Morton*, [1892] 1 Q. B. 39; 20 Digest 138, 1129.

(*i*) S. 28; 26 Halsbury's Statutes 319; Sched. II., Part I., r. 10; 26 Halsbury's Statutes 478.

(*k*) Sched. II., Part I., r. 5; 26 Halsbury's Statutes 476.

(*l*) *Ibid.*, r. 6.

(*m*) Sched. II., Part III., r. 2; 26 Statutes 479.

(*n*) *Ibid.*, r. 7.

(*o*) Sched. II., Part I., r. 10.

(*p*) 7 Halsbury's Statutes 564.

(*q*) See s. 239; 26 Halsbury's Statutes 434.

(*r*) See s. 237.

(*s*) 10 Halsbury's Statutes 636.

becomes disqualified for being mayor, he continues to be a justice during the year next after he ceases to be mayor. Before acting as a borough justice he is to take the oaths required by law to be taken by a justice for the borough, unless he has already taken them as a borough justice (t). The mayor of a non-county borough is, in addition, during his term of office a justice of the peace for the county in which the borough is situate, but before acting as such justice he is to take the oaths required by law to be taken by a justice for the county, unless he has already taken them as a county justice (u). As mayor, if present, he is entitled to preside at all meetings of the justices of the peace held in the borough, but this is not to entitle him to preside at meetings of county justices, except when acting in relation to the business of the borough or at meetings when any stipendiary magistrate having jurisdiction in the borough is engaged in administering justice (a). [881]

There is no difficulty with borough justices; the mayor always presides if he is present, but questions arise as to when county justices sitting within the limits of a borough can be said to be acting "in relation to the business of the borough" so as to empower the mayor to preside. In *Lawson v. Reynolds* (b), it was decided that this means only when special sessions are held in the borough and not when a person accused of an offence alleged to have been committed in the borough is dealt with by a petty sessional division of the county, which includes the borough. Inasmuch as *Huntingdon Corporation v. Huntingdon County Council* (c) apparently decided that courts of petty session cannot be held in a borough without a separate commission except as courts for petty sessional divisions of the county in which the borough is situate, it is difficult to imagine any circumstances which would give the mayor of such a borough the right to preside at sittings of county justices (d). But if he and the ex-mayor sat in the borough as a court, the mayor would be entitled to preside. Where the borough has a separate commission, the question is not of importance, because even if in the particular circumstances the county justices have concurrent jurisdiction they seldom if ever exercise it. [882]

Until the L.G.A., 1938, there was always some doubt as to the right of the mayor to preside over the borough licensing committee appointed under the Licensing (Consolidation) Act, 1910 (e). In sect. 18 (9) of the Act of 1938 (f), the words "at which he is present by virtue of his office as mayor" contained in sect. 155 (2) of the Municipal Corporations Act, 1882, which it replaces, have been omitted, and now there appears to be no doubt that the mayor has such a right. Where the mayor is the owner or lessee of licensed premises or otherwise interested in the property, he is not disqualified from acting as a

(t) S. 18 (7); 26 Halsbury's Statutes 314, and see *post*, p. 398.

(u) S. 18 (8); *ibid.*, 314. The mayor of a county borough is not *ex-officio* a justice for the county.

(a) S. 18 (9).

(b) [1904] 1 Ch. 718; 33 Digest 70, 446. But in spite of this decision there is ground for the view that "borough business" should be construed as "offences committed and matters arising within the borough"; see 76 J. P. Jo. 565.

(c) [1901] 2 K. B. 257; 33 Digest 371, 797, and *Reigate Corp. v. Hart* (1868), L. R. 3 Q. B. 244; 33 Digest 459, 1717.

(d) See article in 76 J. P. Jo., p. 567. See also s. 158 of Municipal Corporations Act, 1882; 10 Halsbury's Statutes 627.

(e) 9 Halsbury's Statutes 988; see 76 J. P. Jo. 565.

(f) 26 Halsbury's Statutes 315.

member of a licensing committee, but he cannot take part in relation to a matter affecting the premises in which he is interested. [883]

Oaths to be Taken by Mayor.—Having regard to the provisions of sect. 18 (7) (8) of the Act of 1933 it would seem that the mayor must take the oaths required to be taken both by a justice of the peace for the borough (even though it be a non-county borough without a commission of the peace) and for the county (g).

These are the oaths of allegiance and the judicial oath prescribed by the Promissory Oaths Act, 1868 (h), which must be taken before such person as His Majesty may appoint or in open court at the quarter sessions or in any superior courts (i). The mayor may take the oaths before any two justices of the borough, or if there be no two such justices then before two councillors (j), His Majesty in December, 1920, having appointed that the oaths may be so taken. In the opinion of the Home Secretary, it is preferable for the mayor to take the oath in the manner prescribed for mayors, *e.g.* before two borough justices, or if there be not two before two councillors, and it is open to the mayor of a borough without a separate commission of the peace to take the oaths in this manner. If he does so, he is entitled without taking them in any other manner to act not only as a justice for the borough but also as a county justice (k).

The Judicial Committee of the Privy Council in 1910 reported that the law does not require that judicial officers who have taken the oath of allegiance and the judicial oath should again take those oaths or either of them after the demise of the Crown (l).

Further, as to justices' oaths, see title MAGISTRATES. [884]

Mayor as Land Tax Commissioner.—By virtue of sect. 87 of the Land Tax Act, 1797, the mayor upon qualifying himself is a land tax commissioner (m). [885]

Quarter Sessions Duties.—In a quarter sessions borough, in the absence of the recorder or deputy recorder, the mayor may at times for the holding of the court of quarter sessions open the court and adjourn the holding thereof and respite all recognisances until such a day as he may proclaim, but he may not sit as a judge of the court at the trial of offenders (n). As a matter of courtesy to the recorder, the mayor in many county boroughs sits at the right hand of the recorder at the opening of quarter sessions. [886]

Practising before Justices as a Solicitor.—Sect. 54 of the Solicitors Act, 1932 (o), forbids a solicitor who is a justice of the peace for any

(g) He is not, however, now required to make the declaration required to be made by a justice under s. 157 (2) of the Municipal Corporations Act, 1882. See s. 18 (10); 26 Halsbury's Statutes 815.

(h) 3 Halsbury's Statutes 831.

(i) Promissory Oaths Act, 1871; 3 Halsbury's Statutes 389. As to the early history of these oaths, see an article in 74 J. P. Jo. 254.

(j) Not aldermen. Home Secretary's letter, November 7, 1920.

(k) See 90 J. P. Jo. p. 40. It is possible, however, that it might be judicially decided that s. 18 (8) of the Act of 1933 must be closely followed and that it is necessary for the mayor of a borough without a separate commission to take the oath in manner prescribed for county justices, *i.e.* in open court at the general or quarter sessions, before he can act as a county justice.

(l) See 100 J. P. Jo., p. 50.

(m) 10 Halsbury's Statutes 199.

(n) Municipal Corporations Act, 1882, s. 167; 10 Halsbury's Statutes 631.

(o) 25 Halsbury's Statutes 819.

county, riding or division, to practise directly or indirectly before any justices for that county, riding or division, or for any partner of his to practise directly or indirectly before those justices, or before justices for any borough within that county, riding or division. By a proviso to the section, this prohibition is lifted in London as respects a partner of a solicitor who is a justice of the peace for the County of London. Apparently any such difficulty could be removed if the solicitor obtained an order from the Lord Chancellor for his exclusion from the exercise of his functions as a justice under sect. 4 of the Justices of the Peace Act, 1906 (*p*). [887]

Robes, Chains, etc., and the Mace.—As to the provision and use of these, see title CEREMONIES. [888]

Social Precedence.—The social precedence of the mayor is a matter of statutory enactment, as under sect. 18 (5) of the Act (*g*) the mayor has precedence in all places in the borough. This means social precedence (*r*), and does not affect the Royal prerogative (*s*), so that the mayor has no precedence over a direct representative of the Crown. Consequently the lord lieutenant of the county has precedence in every borough which has not its own lord lieutenant (*t*). The mayor has no precedence over the Vice-Chancellor of the University in Oxford and Cambridge respectively (*u*). Further, as to precedence, see title CEREMONIES. [889].

Deputy Mayor.—The mayor may under sect. 20 appoint an alderman or councillor to be deputy mayor, who may if for any reason the mayor is unable to act or the office of mayor is vacant, discharge all functions which the mayor as such might discharge, except that he may not take the chair at a meeting of the council unless specially chosen to do so (*a*), and he cannot as deputy mayor act as a justice of the peace. The appointment of deputy mayor is to be signified to the council in writing and recorded on the minutes. The deputy mayor holds office until a newly elected mayor becomes entitled to act (*b*). [890]

London.—For the City of London, see that title and also the title LORD MAYOR. The office of mayor of a metropolitan borough is created by sect. 2 (1) of the London Government Act, 1899 (*c*), as amended by the Qualification of Women (County and Borough Councils) Act, 1907 (*d*), and the Sex Disqualification (Removal) Act, 1919 (*e*). Sect. 24 of the Act of 1899 (*f*) provides that a mayor of a metropolitan borough shall be ex-officio a justice of the peace for the County of London. As to the mayor or his partner practising before justices as a solicitor, see *supra*.

(*p*) 11 Halsbury's Statutes 364.

(*g*) 26 Halsbury's Statutes 814.

(*r*) *Ex parte Birmingham (Mayor)* (1860), 3 E. & E. 222; 33 Digest 285, 13.

(*s*) See as to Royal prerogative, s. 806; 26 Halsbury's Statutes 468, and title "Royal Prerogative," Halsbury (2nd ed.), Vol. VI., pp. 443 *et seq.*

(*t*) *Ex parte Birmingham (Mayor)*, *supra*. See also title LORD LIEUTENANT.

(*u*) S. 302; 26 Halsbury's Statutes 464.

(*a*) See also Sched. III., Part II., r. 3; 26 Halsbury's Statutes 497. This is because the appointment is not made by the council, but by the mayor.

(*b*) S. 20; 26 Halsbury's Statutes 315.

(*c*) 11 Halsbury's Statutes 1225.

(*d*) 10 Halsbury's Statutes 843.

(*e*) *Ibid.*, 79.

(*f*) 11 Halsbury's Statutes 1238.

Sect. 2 (4) of the Act of 1899 applied to mayors of metropolitan boroughs sect. 75 of L.G.A., 1888 (*g*), which in turn applied certain provisions of the Municipal Corporations Act, 1882. Some of the provisions so applied by the Act of 1899 have been repealed by sect. 76 of and schedule to the L.C.C. (General Powers) Act, 1934 (*h*), but the following provisions of the Act of 1882 are still applicable: sect. 15 (1) to (4) (qualification, term of office and remuneration of mayor); sect. 38 (mayor to continue to be member of council during office); sect. 39 (1) (a), (2), (3) (avoidance of office by bankruptcy, etc.); sect. 40 (filling of casual vacancy); sect. 42 (validity of acts done notwithstanding disqualification); sect. 61 (time and mode of election of mayor); and sect. 66 (time for filling casual vacancies). The repealed provisions of the Act of 1882 are replaced by sects. 31 to 36 of the L.C.C. General Powers Act of 1934 (*i*), which closely resemble corresponding provisions in sects. 58, 61, 62 and 84 of L.G.A., 1888 (*k*).

Sect. 2 (5) of the London Government Act, 1899, applies to mayors of metropolitan borough councils, sect. 46 of L.G.A., 1894 (*l*). This section relates to the disqualifications for holding office. Sub-sects. (1), (2), (4), (5), (7), and, as regards voting only and not acting, sub-section (8) of this section, still extend to mayors of metropolitan boroughs. With regard, however, to sect. 46 (1) (b) (disqualification by poor relief), the disqualification imposed by this paragraph was modified by sect. 10 (3) of L.G.A., 1929 (*m*). Sect. 46 (6) of the Act of 1894 as to disqualification by absence from meetings for six months was replaced by sect. 35 of the L.C.C. General Powers Act, 1934 (*n*).

Sect. 62 of the L.C.C. (General Powers) Act, 1929 (*o*), provides for the appointment of a deputy mayor by a borough council, not by the mayor as outside London.

The ordinary day of election of mayor is November 9 or, if that day is a Sunday, the following day (London Government Act, 1899, s. 8 (3)). [891]

(g) 10 Halsbury's Statutes 746.

(h) 27 Halsbury's Statutes 435-438.

(i) 26 Halsbury's Statutes 334, 337, 338, 350.

(l) 10 Halsbury's Statutes 804.

(n) 27 Halsbury's Statutes 420.

(i) *Ibid.*, 418-422.

(m) *Ibid.*, 890.

(o) 11 Halsbury's Statutes 1425.

MAYOR'S AUDITOR

See AUDITORS.

MEALS, PROVISION OF, FOR CHILDREN

See EDUCATION SPECIAL SERVICES; MATERNITY AND CHILD WELFARE.

“MEANS TEST”

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See also titles : PUBLIC ASSISTANCE ;
PUBLIC ASSISTANCE IN LONDON ;
UNEMPLOYMENT.

Meaning.—The phrase “means test” has never been used in an Act of Parliament but the origin was probably the result of the imposition of a test of need by the regulations relating to the Administration of Transitional Payments (Unemployment Insurance) (National Economy) Order, 1931, and when used informally at the present time generally refers to an inquiry into means in connection with the Unemployment Assistance Act, 1934 (*a*), as described below, in which Act the word “need” is invariably used. An inquiry into means has, however, been part of the administrative procedure under the Poor Law for many centuries, under the principle that public assistance from rates or taxes should only be afforded to persons who can show that they are in need. An inquiry into means is also necessary to ascertain whether or not the recipient (or a person legally liable to maintain him) is able to repay or contribute towards the cost of maintenance afforded him and also to verify that a recipient cannot contribute to the cost of the assistance afforded. [892]

Poor Law.—From the time of Queen Elizabeth the qualification for the receipt of poor relief has been “destitution,” though in course of time the application of this test became less exacting, *e.g.* an applicant for medical or surgical assistance who was not in a position to obtain the necessary aid, though he possessed cash sufficient to pay for it, was considered to be destitute, and the test was not applied with such harshness as to require an applicant to sell his household goods before applying for outdoor relief. In sect. 15 of the Poor Law Act, 1930 (*b*), the duty of the public assistance authority (*c*) is expressed to be to set to work all such persons as have no means to maintain themselves, and use no ordinary and daily trade of life to get their living by, and to provide such relief as may be necessary for the lame, impotent, old, blind and such other persons as are poor and not able to work. A maintenance order may be obtained from the justices under sect. 19 of the Act (*d*) by the public assistance authority for the payment of a weekly sum by the husband or other relative liable under sect. 14 of the Act to maintain the recipient of the relief, and property may be appropriated by the authority under sect. 20 of the Act in reimbursement of the cost of the relief, the applicant being bound under sect. 20 (*3*) to disclose money and other property in his possession and under his

(*a*) 27 Halsbury's Statutes 756.

(*b*) 12 Halsbury's Statutes 978.

(*c*) Councils of counties and county boroughs.

(*d*) 12 Halsbury's Statutes 970. This provision extends to a patient in a mental hospital; see s. 296 of the Lunacy Act, 1890; 11 Halsbury's Statutes 117.

immediate control. In the grant of outdoor relief a means test is also inferred, as sect. 48 of the Act (e) provides that a sum received from a friendly society as sick pay or benefit under the National Health Insurance Acts are *not* to be taken into consideration except where the sick pay is over 5s. a week, or the national health insurance benefit is over 7s. 6d. a week. To this was added by sect. 1 of the Poor Law Act, 1934 (f), trade union pay, maternity benefit, and any wounds or disability pension, in order to make the Poor Law consistent with the Unemployment Assistance Act, 1934. [893]

Unemployment Assistance Act.—By Part II. of the National Insurance Act, 1911 (g), relating to unemployment insurance, certain benefits were to be paid in return for fixed contributions by the insured person, the employer and the State, and at that time the scheme was so framed by the actuaries that there should have been no deficit in the fund. But after the War, the restrictions imposed by the Act were not complied with, and payments to persons who would otherwise have fallen out of benefit were made, first as "extended" or "uncovenanted benefits," then as "transitional benefits" and by the Transitional Payments (Determination of Need) Act, 1932 (h), as "transitional payments." In the reports of the Royal Commission on Unemployment (i) it was stated that owing (i.) to the increase of unemployment, (ii.) to the increase of rates of benefit with no corresponding increase in contribution, and (iii.) to the relaxation of the conditions for the receipt of benefits the fund had, in May, 1931, become in debt to the Treasury to the extent of £82,810,000. The May Committee on National Expenditure therefore recommended that all applicants for benefit who had exhausted their insurance right (*i.e.* those in receipt of transitional payments) should be subjected to a test of need. Under the National Economy Act, 1931 (k), therefore, Orders in Council were made by which persons who made claims for transitional payments, where it appeared that they were eligible under the Insurance Acts, were referred to the local authorities, who by the public assistance committees inquired into their circumstances and determined the amount, if any, at which transitional payment should be assessed, in the same way and on the same basis as such an application would be considered or determined if it were made by an able-bodied man for public assistance. In answer to a question in the House of Commons on December 1, 1932, the Minister of Labour said that the saving through the needs test was at the rate of £15,000,000 a year. By the Transitional Payments (Determination of Need) Act, 1932 (l), rules were made as to the determination of need, and as to what was to be taken into account when it was determined. These rules were replaced by sect. 38 of the Unemployment Act, 1934 (m), when the system of administering relief to those unemployed who had fallen out of benefit under the Unemployment Insurance Act was

(e) 12 Halsbury's Statutes 901.

(f) 27 Halsbury's Statutes 457.

(g) Replaced by the Unemployment Insurance Act, 1920; 20 Halsbury's Statutes 650.

(h) 25 Halsbury's Statutes 946.

(i) First Report, dated June, 1931, pp. 17, 24, and Final Report, dated October 27, 1932, p. 33.

(k) 24 Halsbury's Statutes 393.

(l) 25 Halsbury's Statutes 946. Repealed by the Unemployment Assistance Act, 1934.

(m) 27 Halsbury's Statutes 789.

placed under the care of the Unemployment Assistance Board (n), and it is to this section or to the regulations made under it that the term "means test" may now be taken to refer. [894]

By sect. 88 (2) of that Act, the amount of any allowance to be granted is to be determined by reference to the applicant's needs, including the needs of any members of his household who are dependent on or ordinarily supported by him, and the needs are to be assessed in accordance with regulations to be made under the Act (o). These regulations must provide that the resources of an applicant taken into account are to include the resources of all the members of the household of which he is a member, due regard being given to the personal requirements of those members whose resources are taken into account. As in the earlier Acts and in the Poor Law Act, 1930, referred to above, certain payments are to be disregarded. These are (i.) the first five shillings a week of any sick pay from a friendly society and the first seven shillings and sixpence a week of any benefit under the National Health Insurance Acts, 1924-32 (oo), and the whole of any maternity benefit under those Acts, except any increase by way of additional benefits or of a second maternity benefit; (ii.) the first £1 a week of any wounds or disability pension; and (iii.) one-half of any weekly payment of any compensation under the Workmen's Compensation Acts. It is also provided that as regards all money and investments treated as capital assets, in so far as their value does not exceed £25, they shall be disregarded; if exceeding £25 but not exceeding £300 they must be treated as the equivalent of a weekly income of 1s. for every complete £25. In taking into account the value to any person of any interest he has in the house in which he resides, any sum which he might obtain by selling or borrowing money upon the receipt of that interest is to be disregarded. It is further provided by sect. 38 (4) that "needs" do not include medical needs, which by sect. 54 of the Act of 1934 (p) means the need of medical or surgical assistance, including any need of drugs, medical or surgical appliances or of nursing or similar services.

Investigations into the circumstances of applicants are to be made under sect. 88 (5), by officers of the Unemployment Assistance Board, or by agreement with officers of local authorities. Temporary arrangements were made by the Board for this to be done in rural districts by officers of county councils, but these were ended in April, 1936. [895]

Other Acts.—Inquiries as to the means of parents become necessary under the Education Act, 1921, where scholarships are provided under sect. 71 of that Act (q), and also to enable the local education authority to decide whether the cost of medical treatment or meals at school furnished to a child should be recovered from the parent under sect. 81 or sect. 83 of the Act (r). Recovery need not be made if the authority "are satisfied that the parent is unable by reason of circumstances other than his own default to pay the amount." [896]

(n) See title UNEMPLOYMENT ASSISTANCE.

(o) The first regulations (S.R. & O., 1934, No. 1424; 27 Halsbury's Statutes 846) were withdrawn and replaced by the Unemployment Assistance (Determination of Need and Assessment of Needs) Regulations, S.R. & O., 1936, No. 776.

(oo) Now consolidated. See National Health Insurance Act, 1936.

(p) 27 Halsbury's Statutes 801.

(q) 7 Halsbury's Statutes 168.

(r) *Ibid.*, 175, 176.

By sect. 16 of the L.G.A., 1929 (s), a local authority are required to recover the expenses of maintenance of any patient in any institution, other than a patient receiving treatment for infectious disease, but if they are satisfied that the persons from whom expenses are recoverable cannot reasonably, having regard to their financial circumstances, be required to pay the whole, they may accept a part of them. In sect. 16 (3), "institution" is defined as meaning any hospital, maternity home or other residential institution, accommodation in which is provided by a county council or local authority under the P.H.As., 1875 to 1932, the L.G.A., 1888, as amended by the L.G.A., 1929, or the Maternity and Child Welfare Act, 1918 (t). [897]

In regard to housing, a number of local authorities inquire into the means of those wishing to live in municipal houses, as by sect. 67 of the Housing Act, 1925 (u), they may make such reasonable charges as they think fit. By sect. 51 of the Housing Act, 1935 (a), this power is extended as they may "grant any tenant such rebate from rent as they think fit," and this would not be feasible without an inquiry into means.

An inquiry into means has also been made for many years by rating authorities, who have allowed rates to be paid by instalments in cases of hardship. By sect. 2 (4) of the R. & V.A., 1925 (b), rating authorities are given power to reduce or remit the payment of any general rate on account of the poverty of any person liable to pay. By proviso (b) to sect. 2 (3) of that Act (c) justices were restrained from issuing warrants of committal in default of distress for any person who proved to their satisfaction that his failure to pay was due to circumstances beyond his control, but the proviso is repealed by the Money Payments (Justices Procedure) Act, 1935 (d), and by sect. 10 of that Act a committal is not to be issued unless the court has made inquiry in the defaulter's presence as to whether his failure to pay was due either to his wilful refusal or his culpable neglect. [898]

(s) 10 Halsbury's Statutes 893, now repealed and replaced by sect. 184 of the Public Health Act, 1936.

(t) 11 Halsbury's Statutes 742.

(u) 13 Halsbury's Statutes 1040 (repealed by the Housing Act, 1936).

(a) 28 Halsbury's Statutes 237 (repealed and replaced from January 1, 1937, by sect. 85 of the Housing Act, 1936).

(b) 14 Halsbury's Statutes 620. See title RATES AND RATING.

(c) *Ibid.*, 619.

(d) 28 Halsbury's Statutes 125.

MEASLES

See INFECTIOUS DISEASES.

MEAT

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See also titles :

FOOD AND DRUGS ;
FOOD AND DRUGS AUTHORITIES ;
HORSEFLESH, SALE OF ;
IMPORTED FOOD ;

PRESERVATIVES ;
SLAUGHTER-HOUSES ;
UNSOUND FOOD ;
WEIGHTS AND MEASURES.

Introductory.—Meat sold or on sale is supervised by officers of local authorities as to its freedom from chemical impurity, marking (if imported), sale by weight, its soundness and cleanliness and the methods of slaughtering, storing, handling and labelling it. It is necessary at the outset to state that though the term "meat" is defined in different ways in the material statutes and regulations, the term never includes horseflesh or other flesh not meant for human consumption. [899]

Adulteration.—The only likely method of adulteration is the addition of chemical preservatives contrary to the relevant regulations (a), which entirely forbid such additions to any kind of meat or to meat products other than sausages and sausage-meat. The addition to meat of sulphites, in the form of a dusting powder or in an aqueous solution, was a common practice prior to the promulgation of the regulations, and is still known to occur.

Meat products, such as sausages, meat paste and potted meat, sometimes form the subject of prosecutions under the Food and Drugs (Adulteration) Act, 1928 (b), on the ground that they contain too little meat or too much water or filling material—but no standards for the composition of such articles have been fixed by statute or by general agreement. [900]

Sale by Weight.—The general provisions of the Sale of Food (Weights and Measures) Act, 1926 (c), with regard to short weight in

(a) The Public Health (Preservatives, etc., in Food) Regulations, 1925 (S.R. & O., No. 775); 1926 (S.R. & O., No. 1557); and 1927 (S.R. & O., No. 577), printed at pp. 3326—3333 of Lumley's Public Health, 10th ed. See also title PRESERVATIVES.

(b) 8 Halsbury's Statutes 884. See titles ADULTERATION at p. 126 of Vol. I. and FOOD AND DRUGS.

(c) 20 Halsbury's Statutes 419. See title WEIGHTS AND MEASURES.

the sale of food, apply to the retail sale of meat. The Act also contains (sect. 5) special requirements applying to butchers' meat—an expression which by sect. 13 means beef, mutton, veal, lamb or pork, whether fresh, chilled, frozen or salted, and includes livers, but not heads, feet, hearts, lights, kidneys or sweetbreads, bacon, ham, pressed beef or any meat so treated as to be fit for human consumption without further preparation or cooking, and has been held not to include stuffed meat (*d*).

Butchers' meat may only be sold by net weight (*e*). This means, first, that the weight of the meat is to be a term of the contract of sale and that the meat must be sold at a price based on its weight; and secondly, that the actual weight of the meat itself, without wrappers or skewers, must be the basis of the sale. The sale of joints by Dutch auction, which in some districts is not unusual on Saturday evenings, is rarely or never sale by weight and is therefore in ordinary circumstances unlawful. Sect. 5 further provides that butchers' meat shall not be delivered to a purchaser without a legible statement of the weight on which the price is based, unless delivery to the purchaser is made on or at the premises of the seller immediately after the meat has been weighed in the purchaser's presence. This requirement, however, is subject to a proviso declaring that, where at the purchaser's request the meat is boned or trimmed before delivery and the bones or trimmings are thus removed, or where, at the purchaser's request, delivery of the meat is deferred, the statement of weight shall include both a statement of the net weight of the meat as sent out for delivery and also the net weight on which the purchase price was based. All these provisions are to be enforced by local authorities administering the Weights and Measures Act, 1878 (*f*), but sales by the single pennyworth or in quantities of less than 2 ozs. are exempted by sects. 8, 13 of the Act of 1926 (*g*). [901]

Importation.—Meat imported into the British Isles is subject, like other food, to the regulations applicable to imported food, but these regulations contain special provisions, conferring powers on the M.O.H. of a sanitary authority, with regard to "prohibited meat" and "conditionally admissible meat" (*h*). [902]

Wrapping of Imported Meat.—Inspectors of the M. of A. & F., and of a local authority administering the Diseases of Animals Acts, have power to enter vessels, aircraft, and premises for the purpose of enforcing regulations with respect to the wrapping of imported meat (*i*). [903]

Marking of Imported Meat.—The following kinds of imported meat come within the scope of an order (*k*) under the Merchandise Marks

(*d*) *J. H. Dewhurst, Ltd. v. Eddins*, [1935] 2 K. B. 105; Digest (Supp.).

(*e*) Sale of Food (Weights and Measures) Act, 1926, s. 5 (1); 20 Halsbury's Statutes 421.

(*f*) See title INSPECTORS OF WEIGHTS AND MEASURES, Vol. VII., p. 206; WEIGHTS AND MEASURES.

(*g*) 20 Halsbury's Statutes 422, 426.

(*h*) Public Health (Imported Food) Regulations, 1925 (S.R. & O., No. 273), and 1933 (S.R. & O., No. 347). See also M. of H. Circular 558 (March, 1925). See title IMPORTED FOOD, Vol. VII., pp. 138, 139.

(*i*) Importation of Meat, etc. (Wrapping Materials) Order, 1932; S.R. & O., No. 317. See title IMPORTED FOOD, Vol. VII., p. 139.

(*k*) Merchandise Marks (Imported Goods) No. 7 Order, 1934 (S.R. & O., No. 727), as varied by an amendment Order, S.R. & O., 1936, No. 170. See title IMPORTED FOOD and circular letter of M. of A. to local authorities dated March 28, 1936.

Act, 1926 (l), which requires marks of origin to be borne or applied when meat is imported or when such meat is exposed for sale or sold by wholesale or by retail, viz. chilled beef, frozen mutton, frozen lamb, frozen pork, boneless beef, boneless veal, salted beef, salted pork and edible offals. Frozen beef and frozen veal must also be marked on sale or exposure for sale, but are exempted from being marked on importation. Food and drugs authorities (m) are empowered to enforce the marking provisions which apply to sale and exposure for sale, but are not concerned with the enforcement of provisions applying to meat on importation (n).

The chief provisions of the Act and Order, which affect officers of local authorities are as follows :

The indication of origin is to be given by a mark showing either (1) the country of origin, or (2) the word "foreign" or the word "Empire" as the case may require (see definition of "indication of origin" in sect. 10 of the Act of 1926). The word "imported" is not sufficient.

Where all meat exposed in a shop is imported meat of foreign origin (or imported meat of Empire origin), it is a compliance with the Orders to exhibit prominently in the shop two notices, each not less than 2 feet square, clearly visible to purchasers, bearing the words "All meat in this shop is imported meat of foreign origin" (or "All meat in this shop is imported meat of Empire origin" as the case may be) in letters not less than 2 inches in height (Art. 4 of Order, 1st proviso). And where all meat on a tray, slab, or rail is either of foreign or of Empire origin, a prominently displayed ticket, adequately identifying the meat and giving the proper indication of origin, is a sufficient compliance (*ibid.*).

If a joint or cut of chilled beef, frozen mutton, frozen lamb or frozen pork did not on importation, or by reason of the method of preparation for market in the ordinary course of trade does not, bear a stamp indicating origin, the indication of origin must be given on a ticket or label on each joint (Art. 4).

The indication of origin in the case of boneless beef, boneless veal, salted beef, salted pork, and edible offals must be applied to each container or package (Art. 3 (v.)). Imported meat, delivered to a purchaser, need not bear a stamp or label indicating origin if either : (1) the indication of origin is clearly and conspicuously stated on an invoice or delivery note delivered to the purchaser with the goods ; or (2) the purchaser, being present at the shop, has bought food duly marked (Art. 4, 2nd proviso).

The penalty for a contravention of a marking order is a fine not exceeding £5 for a first offence and not exceeding £20 for a second or subsequent offence (o). Such an offence is a contravention of the Merchandise Marks Act, 1887 (p), but proceedings for a breach of a marking order are to be summary and are not indictable. Proceedings under sect. 2 of the Act of 1887 may, however, be instituted by a local authority if imported meat is sold or exposed for sale with a label bearing the word "English." [904]

(l) 19 Halsbury's Statutes 598.

(m) See title FOOD AND DRUGS AUTHORITIES, Vol. VI., p. 128.

(n) See Merchandise Marks Act, 1926, s. 9 ; 19 Halsbury's Statutes 904.

(o) Act of 1926, s. 5 (1) ; 19 Halsbury's Statutes 902.

(p) 19 Halsbury's Statutes 882. See also p. 142 of Vol. VII.

Unsound Meat.—Local sanitary authorities, and their medical officers of health and sanitary inspectors, have duties and powers enabling them to inspect meat, to seize unsound meat, and generally to enforce the laws applying to unsound or unwholesome food. For these powers, see the title **UN SOUND FOOD**. The statutes and regulations dealing with the matter include sects. 116 to 119 of the P.H.A., 1875 (*g*), sect. 28 of the P.H.A. Amendment Act, 1890, where adopted (*r*), the Public Health (Meat) Regulations, 1924 and 1935 (*s*), the Sanitary Officers Order, 1926 (*t*), and various statutory provisions applying to slaughter-houses (*u*). Reference may also be made to sect. 15 of the Markets and Fairs Clauses Act, 1847 (*a*), which is incorporated with the P.H.A., 1875, and deals with unsound meat sold or exposed for sale in a market or fair. [905]

Inspection of Meat.—For the guidance of the M.O.H. and sanitary inspector, the M. of H. issued a memorandum (*b*) on a system of meat inspection recommended for general adoption. This memorandum was accompanied by a circular (*c*), in which attention was drawn to the need for a measure of uniformity in methods of inspection and for inspections being made by properly qualified officers. The memorandum was based on a code of instructions drawn up in 1921 by the Departmental Committee on Meat Inspection and scheduled to the Committee's report. The memorandum and circular should be referred to for points of detail.

For the further guidance of local authorities enforcing the Public Health (Meat) Regulations, the M. of H. in another circular has stated that in this connection "meat" does not include rabbits or poultry, and that in his opinion cooked meat, lard, sausages and other preparations of, or containing, meat may properly be regarded as outside the scope of the regulations which do, however, apply to bacon, ham and edible offals (*d*). [906]

Meat Marking.—The M. of H. may authorise a local authority who have made suitable arrangements for the inspection by competent persons of animals at the time of slaughter, to mark carcases, or parts of carcases, in a distinctive manner in order to indicate freedom from disease and unsoundness (*e*). The mark may only be applied at the request or with the consent of the person in possession of the carcass at the time of its inspection. The local authority may make a marking charge not exceeding 1s. for each carcass or part of a carcass marked, and the charge is recoverable summarily as a civil debt. The M. of H. has indicated in a circular (*f*) that the mark should comprise the word "inspected," the name of the borough or district, and a sign indicating the identity of the inspector. [907]

(*g*) 13 Halsbury's Statutes 672, 678.

(*r*) *Ibid.*, 335.

(*s*) S.R. & O., 1924, No. 1432; 1935, No. 187.

(*t*) S.R. & O., 1926, No. 552.

(*u*) See title **SLAUGHTER-HOUSES AND KNACKERS' YARDS**.

(*a*) 11 Halsbury's Statutes 453.

(*b*) Memo. 63 (Foods) of March 1922.

(*c*) Circular 282, March 1922.

(*d*) Circular 604, June 1925.

(*e*) Part III. of the Public Health (Meat) Regulations, 1924 (S.R. & O., 1924, No. 1432), printed at pp. 3316—3321 of Lumley's Public Health, 10th ed.

(*f*) Circular 547, December 1924.

Meat Sold at Stalls.—Persons selling, or offering for sale, meat from a stall must have their names and addresses conspicuously inscribed on the stall (*g*). The stall must be covered and screened so as to prevent mud, filth and the like being splashed or blown on to the meat. The meat must be protected from flies and may not be placed within eighteen inches of the floor or ground unless in a closed receptacle raised not less than nine inches from the floor or ground. The slabs, containers and implements must be kept clean. All trimmings and rubbish must be placed in a covered receptacle apart from the meat (*g*). [908]

Meat in Shops.—The last two sentences of the preceding paragraph apply also to any shop, store or room where meat is sold or kept for sale (*h*). The occupier must also take all such steps as are reasonably necessary to guard against the contamination of the meat by flies, mud and filth (*h*). The M. of H. has indicated that a local authority are not expected to interpret this provision as conferring a power to require all butchers' shops to have glass fronts; and has stated that the precautions required must depend on the circumstances in individual cases (*i*). If meat has to be kept near an open window, covering with clean muslin, when trading conditions permit, might be deemed satisfactory.

All persons engaged in shops or rooms where meat is deposited for sale must observe due cleanliness with regard to the room and its contents. Refuse may not be allowed to accumulate unnecessarily. Except in cold-storage rooms, adequate ventilation must be provided. Meat-shops and meat-rooms may not be used as sleeping-places, and may not communicate directly with sanitary conveniences or with cisterns or drain-pipes leading to or from them. These provisions are substantially repeated in sect. 72 of the P.H.A., 1925 (*k*), which has a wider application in some respects than the Public Health (Meat) Regulations, 1924. [909]

Transport and Handling.—Except when meat is packed in hampers or other impervious cases, or is adequately wrapped in jute or other stout fabric, obligations are imposed by Part VI. of the Public Health (Meat) Regulations, 1924, on persons conveying meat in vehicles or engaged in the handling or transport of meat to protect the meat from contamination. Thus, all vehicles, receptacles and loading appliances must be kept clean; and if the vehicle is open at the top, back or sides, or if any other commodity is being conveyed in the vehicle, the meat must be adequately protected by means of a clean cloth or something similar. No live animal may be conveyed in the vehicle with the meat. The meat must be protected from contact with the ground and from unnecessary exposure to contamination. Those who employ meat porters in the wholesale markets or stores must cause the porters to wear clean and washable head coverings and overalls when carrying unwrapped meat; and the meat porters themselves are under an obligation to wear such coverings and overalls (*l*). [910]

(*g*) Part IV. of the Public Health (Meat) Regulations, 1924 (S.R. & O., 1924, No. 1482).

(*h*) *Ibid.*, Part V.

(*i*) Circular 604, June 1925.

(*k*) 13 Halsbury's Statutes 1148.

(*l*) Part VI. of the Public Health (Meat) Regulations, 1924.

Penalties.—Offences against the regulations of 1924 which were made under the P.H. (Regulations as to Food) Act, 1907 (*m*), are offences under sect. 1 (3) of the P.H.A., 1896 (*mm*). The P.H.A., 1896, is repealed as from October 1, 1937, by the P.H.A., 1936, sect. 143 of which replaces sect. 1 of the 1896 Act, and sub-sect. (5) thereof provides a penalty for wilfully neglecting or refusing to comply with the regulations, or of obstructing their execution. The penalty may be a fine not exceeding £100 with further daily penalties for continuing offences, and is recoverable either summarily under sect. 251 of the P.H.A., 1875 (*n*), or by action on behalf of the Crown in the High Court. An officer or member of the local authority may be authorised to prosecute on their behalf before the justices under sect. 277 of L.G.A., 1933 (*o*). [911]

Local Acts.—Many local authorities have obtained special powers by local Acts to make bye-laws for the inspection of meat brought into their area from other districts, and, subject to limitations to visit and inspect slaughter-houses in such other districts. [912]

London.—The local authorities for the purpose of the Public Health (Meat) Regulations, 1924 (*p*), are the City Corporation and the metropolitan borough councils.

Sect. 65 of the Metropolitan Paving Act, 1817 (*q*), contains a prohibition against the hanging out of meat over pavements. See the title HIGHWAY NUISANCES at p. 401 of Vol. VI.

As to powers relating to registration of premises for the manufacture of potted and preserved meat, inspection of animals and other powers relating to meat as an article of food, see London note to title FOOD AND DRUGS at p. 127 of Vol. IV. [913]

(*m*) 8 Halsbury's Statutes 862.

(*mm*) 13 Halsbury's Statutes 872.

(*n*) *Ibid.*, 730. As to prosecution of offences under the P.H.A., 1936, see ss. 290—290.

(*o*) 26 Halsbury's Statutes 452.

(*p*) S.R. & O., 1924, No. 1432.

(*q*) 11 Halsbury's Statutes 855.

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